

JAN 18 1986

JOSEPH F. SPANIOL, JR.
CLERK

No. 85-755

In The
Supreme Court of the United States

October Term, 1985

Delynda Ann Ricker Barker Reed,

Appellant,

v.

Princess Ann Ricker Campbell, Individually, and as Ad-
ministratrix of the Estate of Prince Rupert Ricker, De-
ceased,

Appellee.

On Appeal from the Court of Appeals for the
Eighth Supreme Judicial District of Texas

JOINT APPENDIX

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Appeal Docketed October 15, 1985
Probable Jurisdiction Noted December 9, 1985

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NO. 486

IN THE COUNTY COURT OF
REAGAN COUNTY, TEXAS.

ESTATE OF PRINCE RICKER,
DECEASED.

APPLICATION FOR LETTERS OF
ADMINISTRATION

(Filed December 23, 1976)

TO THE HONORABLE JUDGE OF SAID COURT:

PRINCESS ANN RICKER CAMPBELL, applicant,
furnished the following information to the Court for issuance of Letters of Administration.

I.

Applicant is an individual interested in this estate, domiciled in and residing at 1203 Mamosa, Odessa, Ector County, Texas, and was related to the decedent as his daughter.

II.

Decedent died on December 22, 1976, in Kerrville, Kerr County, Texas, at the age of 45 years, leaving no last will and testament, insofar as applicant can determine by a diligent search.

III.

This Court has jurisdiction and venue, even though decedent had no domicile or fixed place of residence in Texas, because decedent died in Texas and decedent's principal property was in this county at the time of decedent's death.

IV.

Decedent owned real and personal property described generally as personal possessions and mineral interests, of a probable value in excess of \$10,000.

V.

There is a necessity for administration of the estate of the decedent since there are debts owing by the estate which are not secured by liens on real property.

VI.

Applicant was related to decedent as his daughter, and is designated by statute as having the preferential right to letters of administration, as administrator of the estate, in which capacity applicant is not disqualified by law from serving or from accepting letters of administration, and applicant is entitled to such letters.

WHEREFORE, applicant prays that citation issue as required by law to all persons interested in this estate and that letters of administration be issued to applicant, and that all other orders be entered as the Court may deem proper.

Respectfully submitted,

SHAFFER, GILLILAND, DAVIS,
BUNTON & McCOLLUM, INC.

/s/ By Lucius D. Bunton
ATTORNEYS FOR APPLICANT

(Caption of Probate Court omitted in printing)

PROOF OF LETTERS OF ADMINISTRATION

(Filed January 3, 1977)

On this day PRINCESS ANN RICKER CAMPBELL personally appeared in open Court, and after being duly sworn, deposes and says that:

1. Prince Ricker died on December 22, 1976, in Kerrville, Kerr County, Texas, at the age of 43 years, and four years have not elapsed since the date of decedent's death.
2. Decedent died in Texas and decedent's principal property was in this county at the time of his death; however, he had no domicile or fixed place of residence in Texas.
3. The decedent died leaving no last will and testament, so far as I know or believe.
4. The decedent left debts owing by his estate which are not secured by liens on real property.
5. The applicant, PRINCESS ANN RICKER CAMPBELL, applying for letters of administration, is not disqualified by law from accepting letters of administration or from serving as administrator and is entitled to such letters.

SIGNED this 3rd day of January, 1977.

/s/ Princess Ann Ricker Campbell
Affiant

(Jurat omitted in printing)

(Caption of Probate Court omitted in printing)

ORDER GRANTING LETTERS OF
ADMINISTRATION

(Filed January 3, 1977)

On this day came on to be heard the written application of PRINCESS ANN RICKER CAMPBELL, filed with the Court on the 23rd day of December, 1976, for letters of administration on the Estate of Prince Ricker, Deceased. There was presented in open Court proof that citation and notice as required by law have been duly issued, served, and returned in the manner and for the length of time required by law.

Having considered the evidence and papers on file in this cause and being fully advised in the premises, the Court finds therefrom that all of the statements and allegations contained in application for letters of administration are true and correct.

The Court further finds it has jurisdiction and venue over this estate.

The Court finds that the said Prince Ricker died at the age of 43 years on the 22nd day of December, 1976, in Kerrville, Kerr County, Texas leaving no last will and testament.

The Court finds that there are debts owing by the estate which are not secured by liens on real estate and there exists a necessity for an administration on this estate. No objection or contest to the issuance of letters of administration to the applicant has been filed. The Court finds that the applicant did not have a domicile or fixed place of residence in Texas and that the decedent's principal property was in this county at the time of his death.

The Court further finds that the applicant is a resident of and domiciled in Ector County, Texas, and is not disqualified to serve as administratrix of the estate, and is entitled to the issuance of letters of administration.

After hearing evidence on the extent of the personal property of the estate, anticipated revenues, and debts which are owing, the Court hereby fixes the bond of the administrator at \$1000.00.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED by the Court that PRINCESS ANN RICKER CAMPBELL is hereby appointed as administratrix of the Estate of Prince Ricker, Deceased, and that letters of administration issue upon her taking the oath authorized by law, and upon the posting of a bond in the amount of \$1000.00.

IT IS FURTHER ORDERED that there is no necessity for the appointing of appraisers of this estate.

SIGNED AND ENTERED this 3rd day of January, 1977.

/s/ W. S. Mills
Judge Presiding

(Caption at Probate Court omitted in printing)

OATH

(Filed January 3, 1977)

I do solemnly swear that PRINCE RICKER died without leaving any lawful will, so far as I know or believe, and that I will well and truly perform all the duties of administratrix of the Estate of PRINCE RICKER, Deceased.

/s/ Princess Ann Ricker Campbell
Administratrix

(Jurat omitted in printing)

TRINITY UNIVERSAL INSURANCE COMPANY

DALLAS, TEXAS

BOND AND OATH OF EXECUTOR,
ADMINISTRATOR OR GUARDIAN

(Filed January 10, 1977)

THE STATE OF TEXAS)
) ss.
County of Ector)

IN THE COUNTY COURT, Reagan County, Texas
KNOW ALL MEN BY THESE PRESENTS:

That we, Princess Ann Ricker Campbell as Principal,
and TRINITY UNIVERSAL INSURANCE COMPANY,
as Surety, are held and firmly bound unto the County
Judge of Reagan County, and his successors in office, in
the sum of One Thousand and no/100, (\$1,000.00) Dollars,
conditioned that the above bounden Principal who has been
appointed Administratrix of the Estate of Prince Ricker,
Deceased shall well and truly, faithfully perform all the
duties required of him under said appointment.

Dated this 3rd day of January, 1977.

/s/Princess Ann Ricker Campbell

Principal

TRINITY UNIVERSAL
INSURANCE COMPANY

/s/David R. Hisaw

Attorney in Fact

(Unsigned Jurat form omitted in printing)

The above (—deleted in original) approved the 10
day of January, 1977.

/s/ W. S. Mills
County Judge,
Reagan County, Texas

(Caption at Probate Court omitted in printing)

NOTICE OF HEIRSHIP

(Filed February 16, 1978)

TO THE HONORABLE JUDGE OF SAID COURT:

DELYNDA ANN RICKER BARKER REED, hereby
places this Court, PRINCESS ANN RICKER CAMP-
BELL, Administratrix of the Estate of Prince Ricker, de-
ceased, and all other persons interested in the Estate of
PRINCE RICKER, deceased, on notice of the fact that
DELYNDA ANN RICKER BARKER REED is entitled
to a share of this Estate according to the Statutes of De-
scend and Distribution of the State of Texas. In support
of this Notice of Heirship, reference is hereby made to the
attached Exhibit A which explains fully the facts of DE-
LYNDA ANN RICKER BARKER REED's heirship
rights.

Respectfully submitted,

BROWN, BANCROFT & MILLER

BY /s/ Roger Brown
Attorneys for
Delynda Ann Ricker Barker Reed

(Jurat omitted in printing)

"Exhibit A"

SUPPORTING AFFIDAVIT

STATE OF TEXAS
COUNTY OF HOWARD

Before me, the undersigned authority, a Notary Public
in and for Howard County, Texas, on this day per-
sonally appeared Annabel Barker, known to me to be a

credible person over the age of 21 years, and being first by me duly sworn, on her oath, deposes and says:

"That I, Annabel Barker, married Prince Rupert Ricker on or about the 24th or 27th day of November, 1957, in Juarez, Mexico. The said Prince Rupert Ricker and myself lived together as husband and wife at 200 N. Goliad Street, Big Spring, Howard County, Texas, for a period beginning in November, 1957 and ending in June, 1958. One child was born of said marriage on November 1, 1958, her name being Delynda Ann Ricker, and a true and correct copy of said child's certificate of birth is attached hereto and incorporated herein by reference and made a part hereof for all purposes.

This Affidavit is made in connection with the showing of the facts of heirship between Prince Ricker, deceased, and Delynda Ann Ricker Barker Reed.

Further, Affiant saith not."

/s/ Annabel Barker

(Jurat omitted in printing)

(Certificate of Service omitted in printing)

(Caption at Probate Court omitted in printing)

CLAIM

(Filed February 16, 1978)

TO: PRINCESS ANN RICKER CAMPBELL, Administratrix of the Estate of PRINCE RICKER, Deceased.

The undersigned herewith presents a Claim against the estate of the deceased, to PRINCESS ANN RICKER CAMPBELL, Administratrix of the Estate, for approval.

This Claim is based upon the decedent's failure to support his minor child, DELYNDIA ANN RICKER BARKER REED, when he was under a legal duty to do so. The undersigned hereby claims, based upon a duty to contribute \$100.00 per month to the support of his minor child, that the amount of \$21,600.00 is due, owing and payable to the claimant herein. (See Supporting Affidavit attached hereto.)

/s/Delynda Ann Ricker Barker Reed

(Certificate of Service omitted in printing)

SUPPORTING AFFIDAVIT

STATE OF TEXAS)
)
COUNTY OF HOWARD)

Before me, the undersigned authority, a Notary Public in and for Howard County, Texas, on this day personally appeared ANNABEL PARKER, known to me to be a credible person over the age of 21 years, and being first by me duly sworn, on her oath, deposes and says:

"That I, Annabel Barker, married Prince Rupert Ricker on or about the 24th or 27th day of November, 1957, in Juarez, Mexico. The said Prince Rupert Ricker and myself lived together as husband and wife at 200 N. Goliad Street, Big Spring, Howard County, Texas, for a period beginning in November, 1957, and ending in June, 1958. One child was born of said marriage on November 1, 1958, her name being Delynda Ann Ricker Barker Reed. Prince Rupert Ricker, deceased, at no time from the date of said Delynda Ann Ricker Barker Reed's birth, contributed to the support of said child. This claim is just and correct, and all legal offests, payments and credits known to me have been allowed."

/s/ Annabel Barker

(Jurat omitted in printing)

NO. 2567

IN THE DISTRICT COURT
OF REGAN COUNTY, TEXAS
83RD JUDICIAL DISTRICT

DELYNDA ANN RICKER BARKER REED

VS.

PRINCESS ANN RICKER CAMPBELL,
INDIVIDUALLY AND AS
ADMINISTRATRIX OF THE ESTATE
OF PRINCE RICKER, DECEASED

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, DELYNDA ANN RICKER BARKER REED, hereinafter called Plaintiff, complaining of PRINCESS ANN RICKER CAMPBELL, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF PRINCE RICKER, hereinafter called Defendant, and for cause of action would show the Court the following:

I.

Plaintiff is a resident of Big Spring, Howard County, Texas and Defendant is a resident of Odessa, Ector County, Texas and may be served with citation at 1203 Mimosa, Odessa, Ector County, Texas.

II.

That Prince Ricker died intestate on December 22, 1976; that on December 23, 1976 In the Matter of the Estate of Prince Ricker, deceased, number 486, pending in the Probate Court of Reagan County, Texas, the Defendant

was appointed Administratrix of said Estate; that on January 3, 1977, Princess Ann Ricker Campbell took to oath as authorized and required by law; that on January 10, 1977, Defendant Princess Ann Ricker Campbell posted Bond in the amount of \$1,000.00, said such bond was approved by the Court on the same date; that Defendant is now, and ever since January 19, 1977, has been the duly appointed, qualified and acting Administratrix of the Estate of Prince Ricker.

III.

That said Administratrix has not published a notice of the issuance of said Letters of Administration to her and requiring all persons having claims against said Estate to present the same within the time required by law; that on February 16, 1978. Plaintiff presented her duly authenticated and verified claim with supporting affidavit, to said Administratrix; that on March 18, 1978, said Administratrix rejected said claim by failing to make any notation on her memorandum stating that she rejected or approved the same; that copies of said claim and supporting affidavit are attached hereto and marked Exhibit "A" and incorporated herein by reference.

IV.

That this suit is commenced within the statutory period of 90 days after rejection.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein and that upon final hearing Plaintiff recover Judgment against the Defendant, Individually and as Administratrix of the Estate of Prince Ricker, in a sum greatly

in excess of the Jurisdictional requirement of this court, interest at the rate allowed by law, costs of court and for such other and further relief, general and special, at law and equity, to which Plaintiff may be entitled.

BROWN, BANCROFT & MILLER
P.O. Drawer 2139
Big Spring, Texas 79720

/s/ Drew Mouton
ATTORNEYS FOR PLAINTIFF

(Printer's Note:

Exhibit A—Claim for \$21,000 for child support, already reprinted at page 13.

Exhibit B—Supporting affidavit of Annabel Boutwell, already reprinted at pages 13-14.)

(Caption of District Court omitted in printing)

DEFENDANT'S ORIGINAL ANSWER

(Filed July 28, 1978)

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now PRINCESS ANN RICKER CAMPBELL, individually, and as Administratrix of the Estate of PRINCE RICKER, Deceased, Defendant herein, and for answer to Plaintiff's pleadings would respectfully show the following:

I.

This Defendant admits the allegations contained in Paragraphs I and II of Plaintiff's Original Petition heretofore filed.

II.

Defendant says that in her capacity as Administratrix of the Estate of PRINCE RICKER, Deceased, she did in fact reject the claim previously filed by Plaintiff herein. The claim was rejected because the same was not true, in that such claim sought to recover for child support allegedly owed by Prince Ricker during his lifetime, when in truth and in fact no child support was owed to the claimant at the time of the death of Prince Ricker or at any time prior thereto. The claim as presented asked for \$100 per month for child support when claimant was not in fact the child of Prince Ricker, and no child support was due.

III.

Defendant says that the supporting Affidavit executed by ANNABELLE BARKER alleges that ANNABELLE RICKER and PRINCE RICKER were married in Juarez, Mexico on November 27, 1957.

Defendant says that such marriage, if in fact it took place, was void. PRINCE RICKER, on November 27, 1957 was married to ALICE ROSEMARY RICKER, and such marriage was not terminated until February 28, 1958, the marriage to ALICE ROSEMARY RICKER having taken place several years prior to 1957.

IV.

Defendant says that during the lifetime of PRINCE RUPERT RICKER, there was never a legal, valid marriage to ANNABELLE BARKER, and no child could have been born of a marriage between PRINCE RICKER and ANNABELLE BARKER, and claimant never at any time sought to recover any child support nor made any allegations that claimant was in fact the child of PRINCE RICKER.

V.

Defendant further says that the claim of Plaintiff is barred in whole or in part by the 2-yr. Statute of Limitations of the Civil Statutes of the State of Texas.

VI.

Defendant denies generally, all and singular, the allegations relating and pertaining to the claim, and demands strict proof thereof.

VII.

Defendant says that Plaintiff herein is not, and never has been, an heir of PRINCE RICKER.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the claim of DELYNDIA ANN RICKER

BARKER REED be in all things rejected and Plaintiff's alleged cause of action be dismissed with prejudice, and Defendant be allowed to go hence and recover her costs in this behalf expended.

/s/ Princess Ann Ricker Campbell
Individually, and as Administratrix
of the Estate of PRINCE RICKER,
Deceased, DEFENDANT

SHAFFER, GILLILAND, DAVIS,
BUNTON & McCOLLUM, INC.
P.O. Drawer 1552
Odessa, Texas 79760

/s/ Lucius D. Bunton
ATTORNEYS FOR DEFENDANT

(Jurat omitted in printing)

(Certificate of service omitted in printing)

NOTICE TO ALL PERSONS HAVING CLAIMS
AGAINST THE ESTATE OF
RUPERT P. RICKER, DECEASED

(Filed November 9, 1978)

Notice is hereby given that original Letters Testamentary for the Estate of RUPERT P. RICKER were issued on the 28th day of April, 1977, in Cause No. 486, pending in the County Court of Reagan County, Texas, to:

PRINCESS ANN RICKER CAMPBELL

The residence of such Executrix is Ector County, Texas. The post office address is:

Princess Ann Ricker Campbell
1203 Mimosa Circle
Odessa, Texas 79762

All persons having claims against this Estate which is currently being administered are required to present them within the time and in the manner prescribed by law.

DATED the 18th day of October, 1978.

PRINCESS ANN RICKER CAMPBELL

By: /s/ Richard E. Buck
Attorney for the Estate

(Jurat of Publisher's Affidavit of publication on
October 26, 1978, omitted in printing)

(Caption of County Probate Court omitted in printing)

APPLICATION TO DETERMINE HEIRSHIP

(Filed February 27, 1979)

TO THE HONORABLE JUDGE OF SAID COURT:

DELYNDA ANN RICKER BARKER REED, Petitioner herein is a resident of Big Spring, Howard County, Texas and is a surviving daughter of PRINCE RICKER, Deceased, who died intestate on December 22, 1976, in Kerr County, Texas.

The names and residences of decedent's heirs, all of whom are named herein as Petitioner or Respondents, are:

Princess Ann Ricker Campbell, 1203 Mimosa, Odessa, Texas 79760

Rosemary Jane Ricker Unknown

Prince Ricker Jr. Unknown

Brett Drayton Ricker Unknown

Mark Ricker Unknown

Delynda Ann Ricker Barker Reed, Sterling City Rt., Box 1603, Big Spring, Texas 79720

On the date of decedent's death, he owned the following described real and personal property:

1. A 2,880 acre ranch located in Reagan County, Texas, and valued at \$171,983.00.

2. Mortgages, Notes and Cash totaling \$52,136.00.

Petitioner herein owns an interest in and to all of the above described estate, and Petitioner and Respon-

dent's named herein are the sole and only heirs of said decedent.

The true and correct shares of Petitioner and of each of the heirs named as Respondents herein in the estate of the decedent are as follows:

Princess Ann Ricker Campbell 1/6th

Rosemary Jane Ricker 1/6th

Prince Ricker Jr. 1/6th

Brett Drayton Ricker 1/6th

Mark Ricker 1/6th

Delynda Ann Ricker Barker Reed 1/6th

WHEREFORE, Petitioner prays that citation issue to all said Respondents as required by law, and that on final hearing hereof, this court determine, declare, and adjudge who are the heirs and only heirs of the decedent, PRINCE RICKER; that the Court in particular, determine, declare and adjudge that Petitioner has a 1/6th interest in and to the estate of the decedent; and for such other relief to which she may be entitled.

/s/ Delynda Ann Ricker Barker Reed
BROWN, BANCROFT & MILLER
P.O. Drawer 2139
Big Spring, Texas 79720

/s/ Drew Mouton

ATTORNEYS FOR DELYNDA
ANN RICKER BARKER REED

(Jurat omitted in printing)

(Caption of County Probate Court omitted in printing)

OBJECTION AND ANSWER
TO APPLICATION TO DETERMINE HEIRSHIP

(Filed March 30, 1979)

TO THE HONORABLE JUDGE OF SAID COURT:

Comes PRINCESS ANN RICKER CAMPBELL, individually and as administratrix of the estate of PRINCE RICKER, deceased, and as objection to and answer to the application to determine heirship heretofore filed, would show the Court as follows:

1.

PRINCESS ANN RICKER CAMPBELL denies each and every, all and singular, the allegations in the Application to Determine Heirship, and demands strict proof thereof.

2.

That the only heirs at law of PRINCE RICKER, deceased, are as follows:

Princess Ann Ricker Campbell, Rosemary Jane Ricker, Prince Ricker, Jr., Brett Drayton Ricker, Mark Ricker

3.

That the said Delynda Ann Ricker Barker Reed, applicant, is not an heir at law of Prince Ricker for the reason that the said Delynda Ann Ricker Barker Reed is not the lawful child of PRINCE RICKER, deceased, and has no legal or lawful interest in the property of PRINCE RICKER, deceased.

Wherefore premises considered, the undersigned prays that on the trial hereof the Court find that Princess Ann

Ricker Campbell, Rosemary Jane Ricker, Prince Ricker, Jr., Brett Drayton Ricker and Mark Ricker are the heirs at law of PRINCE RICKER, and that Delynda Ann Ricker Barker Reed be declared not an heir at law. That the undersigned be allowed to go hence and recover her costs in this behalf expended.

/s/ Princess Ann Ricker Campbell
Individually and as Administratrix
of the Estate of Prince Ricker,
deceased

/s/ Lucius D. Bunton
Attorney for the Estate

(Certificate of Service omitted in printing)

(Caption of County Probate Court omitted in printing)

OBJECTION AND ANSWER TO
APPLICATION TO DETERMINE HEIRSHIP

(Filed November 2, 1979)

TO THE HONORABLE JUDGE OF SAID COURT:

Come MS. ROSEMARY JANE RICKER, a/k/a GINA RICKER, and MRS. MARYLYN RICKER WATTS, Guardian of Prince Ricker, Jr., Brett Drayton Ricker and Mark Ricker, Minors, and as objection to and answer to the Application to Determine Heirship heretofore filed, would show the Court as follows:

I.

ROSEMARY JANE RICKER, a/k/a GINA RICKER and MARYLYN RICKER WATTS, Guardian of Prince Ricker, Jr., Brett Drayton Ricker and Mark Ricker, Minors, deny each and every all and singular the allegations in the Application to Determine Heirship and demand strict proof thereof.

II.

That the only heirs at law of PRINCE RICKER, Deceased, are as follows:

Princess Ann Ricker Campbell, Rosemary Jane Ricker a/k/a Gina Ricker, Prince Ricker, Jr., Brett Drayton Ricker, and Mark Ricker.

III.

That the said Delynda Ann Ricker Barker Reed, Applicant, is not an heir at law of PRINCE RICKER, Deceased, for the reason that said Delynda Ann Ricker Barker

Reed is not the lawful child of PRINCE RICKER, Deceased, and has no legal or lawful interest in the property of PRINCE RICKER, Deceased.

WHEREFORE, PREMISES CONSIDERED, the undersigned prays that on the trial hereof the Court find that PRINCESS ANN RICKER CAMPBELL, ROSEMARY JANE RICKER a/k/a GINA RICKER, PRINCE RICKER, JR., BRETT DRAYTON RICKER and MARK RICKER are the heirs at law of PRINCE RICKER, Deceased, and that Delynda Ann Ricker Barker Reed be declared not an heir at law. That the undersigned be allowed to go hence and recover their costs in this behalf expended.

/s/ Lucius D. Bunton
Attorney for
Rosemary Jane Ricker a/k/a Gina
Ricker, and Marylyn Ricker Watts,
Guardian of Prince Ricker, Jr.,
Brett Drayton Ricker and
Mark Ricker

(Certificate of Service omitted in printing)

(Caption of County Probate Court omitted in printing)

DEFENDANT'S MOTION TO DISMISS
OR ALTERNATIVELY, DEFENDANT'S
PLEA IN ABATEMENT

(Filed March 23, 1981)

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant, PRINCESS ANN RICKER CAMPBELL, respectfully presents this Motion to the Court, asking that the Court transfer and dismiss this action now pending, or in the alternative, abate this proceeding, and as grounds therefore would respectfully show to the Court as follows:

1.

V.A.C.S., Probate Code, Section 5, expressly mandates that in those counties where there is no statutory probate Court, County Court at Law or other statutory Court exercising probate jurisdiction, where probate matters are contested, the matter shall be transferred to the District Court upon the Motion of any party to the proceeding. V.A.C.S., Probate Code, Section 5, states in pertinent part as follows:

“(b) In those counties where there is no statutory probate court, county court at law or other statutory court exercising the jurisdiction of a probate court, all applications, petitions and motions regarding probate, administrations, guardianships, and mental illness matters shall be filed and heard in the county court, *except that in contested probate matters*, the Judge of the county court may on his motion, or shall on the motion of any party to the proceeding transfer such proceeding to the district court, which may then hear such proceeding as if originally filed in such court. In contested matters transferred

to the district court in those counties, the district court, concurrently with the county court, shall have the general jurisdiction of a probate court. . . .)”

Further, the 1973 constitutional amendment to Article V, Section 8 of the Constitution of the State of Texas provides “The district court, concurrently with the county court, shall have the general jurisdiction of a probate court.”

2.

On December 22, 1976, Prince Rupert Ricker died intestate. Thereafter, on December 23, 1976, Defendant was appointed Administratrix of the Estate of Prince Rupert Ricker, Deceased in this cause, and on January 3, 1977, Defendant took oath as required by law and posted bond on January 10, 1977, in the amount of \$1,000.00, such bond being approved by this Court. The Administration on said Estate is still pending before this Court.

On February 16, 1978, Plaintiff filed a claim against said Estate claiming to be the minor child of the Decedent and claiming child support in the amount of \$21,600.00. This claim was rejected by operation of law pursuant to V.A.C.S., Probate Code, Section . Thereafter, on July 15, 1978, Plaintiff filed an instrument entitled “Plaintiff's Original Petition” in the 83rd Judicial District Court of Reagan County, Texas, being Cause No. 2567 and styled “Delynda Ann Ricker Barker Reed vs. Princess Ann Ricker Campbell, Individually and as Administratrix of the Estate of Prince Ricker, Deceased,” along with the Affidavit of Annabel Barker stating that Plaintiff is the child of a purported marriage between the deceased and the said Annabel Barker. Defendant timely answered the allegations contained therein and rejected

Plaintiff's claim and denied Plaintiff was an heir at law of the deceased. A copy of said claim, Plaintiff's Original Petition and Defendant's Answer is attached hereto as Exhibits "A-C" respectively, and incorporated herein by reference.

3.

During the time that the abovementioned cause of action was pending in the District Court, Plaintiff filed in this Court on February 27, 1979 an instrument entitled "Application to Determine Heirship," which instrument also alleged Plaintiff to be an heir at law of the deceased. In answer to this application, Defendant timely filed its "Objection and Answer to Application to Determine Heirship", again denying any and all of Plaintiff's claims against said Estate. A copy of such Application and Objection is attached hereto as Exhibits "D & E", respectively and incorporated herein by reference.

4.

The parties in the present and former actions are the same and both of these suits seek to establish the Plaintiff as a lawful heir to the Estate of Prince Rupert Ricker, Deceased and Plaintiff's respective claims against and interests in and to said Estate.

5.

The Plaintiff's Original Petition filed in the District Court is still pending and all discovery efforts made by Plaintiff, such as the taking of depositions of witnesses, have been made in connection with Plaintiff's suit filed in the District Court. Further, the Defendant states that the abovementioned discovery relates directly to and is

concerned with its allegation that the Plaintiff is a lawful heir to said Estate.

6.

Defendant believes that the final judgment entered in the formerly filed and now pending District Court action will be a full and final determination of all the issues presented in this action.

7.

Further, Defendant states that its position in both suits filed by Plaintiff has been, at all times, that Plaintiff is not and never has been an heir at law of Prince Rupert Ricker, Deceased, and that Plaintiff therefore is not entitled to any interest in his estate.

8.

Defendant states that at all times from its receipt of notice of Plaintiff's claims in both causes of action, it has contested and denied and still continues to contest and deny any and all claims of Plaintiff against the Deceased's Estate.

9.

Because Plaintiff's cause of action against Defendant was pending in the 83rd Judicial District Court of Reagan County, Texas some 7 ½ months prior to the filing of its Application to Determine Heirship filed in this Court, and because both causes of action involve the same parties and questions of fact and of law, it would be appropriate for this Court to transfer to the District Court this cause of action and to dismiss the cause of action now pending before it, or alternatively to abate all proceedings in the above entitled cause, pursuant to V.A.C.S.,

Probate Code, Section 5 and Article V, Section 8 of the Constitution of the State of Texas.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that all proceedings in the above entitled cause be transferred to the cause now pending in the 83rd Judicial District Court of Reagan County, Texas and that this cause of action now pending in this Court be dismissed, that Plaintiff take nothing by its petition and that the action against the Defendant be dismissed and Defendant be awarded his cause and such other relief as the Court may deem proper; or, alternatively that all proceedings in the above entitled cause be abated and that the Defendant recover its costs in this behalf expended.

Respectfully submitted,
 SHAFER, GILLILAND, DAVIS,
 McCOLLUM & ASHLEY, INC.
 P.O. Drawer 1552
 Odessa, Texas 79760
 (915) 332-0893

/s/ By: PAUL McCOLLUM
 State Bar Card Number 13436000

(Jurat omitted in printing)

(Certificate of Service omitted in printing)

(Caption of County Probate Court omitted in printing)

ORDER OF CONSOLIDATION

(Filed April 20, 1981)

On considering the Motion of Defendant, PRINCESS ANN RICKER CAMPBELL, Defendant in the above entitled and numbered cause, and Administratrix of the Estate of PRINCE RICKER, Deceased, it appears to the Court that said cause should be consolidated with the case entitled "Delynda Ann Ricker Barker Reed vs. Princess Ann Ricker Campbell, Individually and As Administratrix of the Estate of Prince Ricker, Deceased," being Cause Number 2567, now pending in the 83rd Judicial District Court of Reagan County, Texas.

IT IS, THEREFORE, ORDERED that said causes shall be consolidated and a consolidated suit shall proceed under the style "Delynda Ann Ricker Barker Reed vs. Princess Ann Ricker Campbell, Individually and As Administratrix of the Estate of Prince Ricker, Deceased", being Cause Number 2567 in the 83rd Judicial District Court of Reagan County, Texas.

SIGNED this the 20 day of April, 1981.

/s/ FRANK SANDEL
 JUDGE PRESIDING

(Caption of District Court omitted in printing)

DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

(Filed December 28, 1981)

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendant, PRINCESS ANN RICKER CAMPBELL, Individually and as Administratrix of the Estate of Prince Ricker, Deceased, in the above styled and numbered cause, and after having fully answered herein, makes this her Motion for Summary Judgment pursuant to Rule 166-A of the Texas Rules of Civil procedure, on all issues in this cause as against Plaintiff, and as grounds therefor would respectfully show to the Court as follows:

1.

As alleged by both Plaintiff and Defendant, Prince Rupert Ricker died intestate on December 22, 1976. Thereafter, on December 23, 1976, Defendant was appointed Administratrix of the Estate of Prince Rupert Ricker, Deceased in Cause No. 486 styled "Estate of Prince Ricker, Deceased", then pending in the County Court of Reagan County, Texas, sitting in probate and on January 3, 1977, Defendant took oath as required by law and posted bond on January 10, 1977, in the amount of \$1,000.00, such bond being approved by said County Court sitting in probate. Said administration of the Estate is still pending.

2.

Thereafter, on February 16, 1978, Plaintiff filed a claim against the Estate of Prince Ricker, Deceased in said

Cause No. 486 in the County Court of Reagan County, Texas, claiming to be the minor child of the decedent and praying for child support in the amount of \$21,000.00, such claim being rejected by operation of law pursuant to the Probate Code of the State of Texas.

3.

On 6-15-78, Plaintiff filed an instrument entitled "Plaintiff's Original Petition" in the 83rd Judicial District Court of Reagan County, Texas, being Cause No. 2567 and styled "Delynda Ann Ricker Barker Reed vs. Prince Ricker, Deceased, claiming to be the minor child of Prince Rupert Ricker, Deceased, of a purported marriage between the deceased and Annabel Barker, alleged to have taken place in Juarez, Mexico on or about November 24th or 27th, 1957."

Defendant timely answered the allegations contained therein and rejected Plaintiff's claim and denied that Plaintiff was an heir at law of the deceased, Plaintiff's Original Petition and Defendant's Answer thereto being on file with this Court among the papers of this cause, and being incorporated herein by reference.

4.

Defendant thereafter filed an instrument entitled "Defendant's Motion to Dismiss or Alternatively, Defendant's Plea in Abatement" in Cause No. 486 in the abovementioned Cause No. 486 in the County Court of Reagan County, Texas, seeking transferrance and consolidation, or alternatively, abatement, of said Cause No. 486, to the also then pending suit on file in the 83rd Judicial District

Court of Reagan County, Texas, being Cause No. 2567, and styled "Delynda Ann Ricker Barker Reed vs. Princess Ann Ricker Campbell, Individually and as Administratrix of the Estate of Prince Ricker, Deceased", due to the fact that both pending actions involved the same parties and both of said suits sought to establish the Plaintiff as a lawful heir to the Estate of Prince Ricker, Deceased, and Plaintiff's respective claims against and interests in and to said Estate, being certain mineral interests in lands.

Thereafter, on April 20, 1981, after hearing and notice, Judge Frank Sandel, presiding Judge of the County Court of Reagan County, Texas signed an Order of Consolidation in Cause No. 486, consolidating said Cause No. 486 pending in the County Court with Cause No. 2567 pending in the 83rd Judicial District Court of Reagan County, Texas, reference being hereby made to said "Defendant's Motion to Dismiss or Alternatively, Defendant's Plea in Abatement" and the "Order of Consolidation" on file with this Court, for all purposes.

5.

Defendant would show that at all times material hereto, Defendant's mother, Annabel Barker, was not married to the deceased, Prince Rupert Ricker, and that Plaintiff, if she was in fact a child of Prince Rupert Ricker, Deceased, which is not admitted, was for all purposes an illegitimate child.

Defendant would further show that at the time of the purported marriage of the Deceased and Plaintiff's mother, Annabel Barker, the deceased, Prince Rupert Ricker, was lawfully married to Alice Rosemary Ricker,

Defendant's mother. Prince Rupert Ricker, Deceased, was married to Alice Rosemary Ricker on or about September 27, 1954, in Dallas County, Texas, and was not divorced from the said Alice Rosemary Ricker until February 28, 1958.

Attached hereto and incorporated herein by reference for all purposes is a certified copy of the Judgment decreeing a divorce between Alice Rosemary Ricker and Prince Rupert Ricker, signed by the Judge on February 28, 1958 in Cause No. 11,122 in a suit styled "Alice Rosemary Ricker vs. Prince Rupert Ricker" in the 118th Judicial District Court of Howard County, Texas. A certified copy of such Judgment is attached hereto as Exhibit "B".

Also attached hereto and incorporated herein by reference for all purposes is a certified copy of the Marriage License of Prince Rupert Ricker and Alice Rosemary Lawson, certifying their marriage on September 27, 1954, which certified copy is attached hereto as Exhibit "A", and Affidavit of Thelma Barham, attached hereto as Exhibit "C".

6.

Defendant says that there was no decree of divorce ever entered dissolving the purported marriage of Prince Rupert Ricker, Deceased, and Annabel Barker, and Defendant states that none exists. Further, this Defendant denies that there ever was any purported marriage and that Plaintiff, Delynda Ann Ricker Barker Reed, if she is a child of Prince Rupert Ricker, which is denied, is illegitimate.

7.

In summary, Defendant states that Prince Rupert Ricker, Deceased, died on December 22, 1976, intestate. On December 23, 1976, Defendant was appointed Administratrix of the Estate of Prince Ricker, Deceased, took oath as required by law on January 3, 1977 and posted bond on January 10, 1977. A certified copy of Letters of Administration granted Defendant is attached hereto and incorporated herein for all purposes as Exhibit "D".

On February 16, 1978, Plaintiff filed a claim against the Estate in Cause No. 486 in the County Court of Reagan County, Texas, which was rejected by operation of law, and thereafter, on July 15, 1978, Plaintiff filed an Original Petition in this Court, the 83rd Judicial District Court of Reagan County, Texas, against this Defendant.

Thereafter, on April 20, 1981, the two pending actions were consolidated by Order of the Court and now proceed under this cause of action, being Cause No. 2567 in the 83rd Judicial District Court of Reagan County, Texas.

8.

Defendant would further show to the Court that neither Plaintiff, nor Plaintiff's mother, nor any other representative of Plaintiff has filed suit to establish the parent-child relationship between Plaintiff and Prince Rupert Ricker, Deceased, and that the claim and Cause of Action filed by Plaintiff is barred by the statute of limitations.

9.

Defendant would show that the pleadings, together with the Affidavit and Exhibits attached hereto, show

that there is no genuine issue as to any material fact and that this Defendant is entitled to Judgment in this cause of action as a matter of law, for which this Defendant respectfully prays.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that this Motion for Summary Judgment be granted in favor of this Defendant, that Defendant be granted its costs of suit, and for such other relief, either at law or in equity, to which this Defendant may show itself to be justly entitled.

Respectfully submitted,

SHAHER, GILLILAND, DAVIS, MCCOLLUM
& ASHLEY, INC.

P. O. Drawer 1552
Odessa, Texas 79760
(915) 332-0893

By: /s/ PAUL MCCOLLUM
State Bar #13436000

ATTORNEYS FOR DEFENDANT

(Certificate of Service omitted in printing)

EXHIBIT "A"

THE STATE OF TEXAS,)

County of Dallas.)

To any Regularly Licensed or Ordained Minister of the Gospel, Jewish Rabbi, Judge of the District or County Court, or Justice of the Peace in the State of TEXAS—
GREETING:

YOU ARE HEREBY AUTHORIZED To Celebrate the Rites of Matrimony between Mr. Prince Rupert Ricker, and Miss Alice Rosemary Lawson and make due return to the County Clerk of said County, within sixty days thereafter, certifying your action under this License.

WITNESS My official signature and seal of office, at office in Dallas, this 27th day of September, A.D. 1954

(L.S.) ED H. STEGER, County Clerk,
By O. H. Crossett, Deputy.

I, A Minister of the gospel, hereby certify that on the 27th day of September, A.D. 1954, I united in Marriage Prince Rupert Ricker and Alice Rosemary Lawson the parties above mentioned.

WITNESS My hand, this 27th day of September, A.D. 1954.

THE ORIGINAL OF	Alsie H. Carleton,
THIS MARRIAGE	Dallas, Texas
LICENSE WAS IS-
SUED IN ACCORD-
ANCE WITH	
HOUSE BILL NO.	
588 PASSED BY	
THE 51ST LEGIS-	
LATURE OF TEX-	
AS.	

Returned and filed for record the day of
....., and recorded the day of

ED H. STEGER, County Clerk.
By Deputy.

How disposed of Gen. Del. Gärden City, Texas.

EXHIBIT "B"

NO. 11,122

ALICE ROSEMARY)	IN THE 118TH
RICKER)	DISTRICT COURT
VS.)	OF
PRINCE RUPERT)	HOWARD COUNTY,
RICKER)	TEXAS

JUDGMENT

This the 28th day of February, 1958, came on to be heard the above entitled and numbered cause wherein Alice Rosemary Ricker is Plaintiff and Prince Rupert Ricker is Defendant, and the Plaintiff appeared in person and by attorney and Defendant although legally cited to answer herein failed to appear and answer in this behalf; whereupon, a jury being waived and the Court having examined the Plaintiff's petition for divorce and having determined that the same is in due form and contains all of the allegations and information required by law, and having heard the pleadings and evidence, and being of the opinion that the material allegations of such petition are supported by the evidence and are true and that all prerequisites of law have been complied with, and that the Plaintiff is entitled to the following judgment:

IT IS ORDERED, ADJUDGED AND DECREED by the Court that the bonds of matrimony heretofore existing between the Plaintiff, Alice Rosemary Ricker, and the Defendant, Prince Rupert Ricker, are hereby dissolved and the Plaintiff is granted a divorce from the Defendant.

It further appearing to the Court that there were two children born to the Plaintiff and Defendant during their said marriage, to-wit: Princess Ann Ricker, age 2½ years,

and Rosemary Jane Ricker, age one (1) year; and the Court having heard the evidence as to surroundings and circumstances, of such children and the financial circumstances, character and fitness of their parents and their ability to contribute to the support of said children, and being of the opinion that the best interest of the said children will be served if they are given into the custody of Plaintiff; it is, therefore, ORDERED, ADJUDGED AND DECREED by the Court that the care, custody and control of the said children be granted to the Plaintiff, Alice Rosemary Ricker, with reasonable rights of visitation reserved to the Defendant. It is further the ORDER of this Court that Defendant shall have the right of custody and control over Princess Ann Ricker one night each calendar month; and further, at such time as Rosemary Jane Ricker reaches the age of 21½ years, Defendant shall also have the custody and control over her for one night each calendar month.

It is further ORDERED, ADJUDGED AND DECREED by the Court that the above named children of Plaintiff and Defendant shall not be removed from the state of Texas for a period of time in excess of one month in any one year without the consent of the Court being had in advance; it being contemplated that the children might spend one such month out of each year on vacations as to that month no consent of the Court be required.

It is further ORDERED, ADJUDGED AND DECREED by the Court that Prince Rupert Ricker, Defendant, pay to Alice Rosemary Ricker, Plaintiff, on the first day of March, 1958, and on the first day of each succeeding month thereafter, the sum of Fifty Dollars

(\$50.00) for the support of Princess Ann Ricker and Rosemary Jane Ricker and that such payments shall continue until Rosemary Jane Ricker shall have reached the age of eighteen (18) years.

ENTERED this 28th day of February, 1958.

/s/ CHARLIE SEECHER
Judge Presiding

APPROVED:

/s/ Alice Rosemary Ricker, Plaintiff
/s/ Prince Rupert Ricker, Defendant

(Jurat omitted in printing)

EXHIBIT "C"

AFFIDAVIT

THE STATE OF TEXAS)
COUNTY OF ECTOR)

BEFORE ME, the undersigned authority, a Notary Public in and for said County, State of Texas, on this day personally appeared THELMA BARHAM, to me well known, and who, after being by me duly sworn, deposes and says as follows:

THAT:

My name is Thelma Barham, and I live at 1605 Fargo, Odessa, Ector County, Texas. My daughter is Alice Rosemary Lawson Ricker Parks, who was married to Prince Rupert Ricker. My daughter and Prince Rupert Ricker were married on September 27, 1954, in Dallas County, Texas. Two children were born of this marriage, being my grandchildren, Princess Ann Ricker Campbell and Rosemary Jane "Gina" Ricker. Prince Rupert Ricker and my daughter, Alice Rosemary Lawson Ricker Parks, were husband and

wife until their divorce on or about February 28, 1958, in Howard County, Texas.

Prince Rupert Ricker is now deceased, he having died on December 22, 1976.

EXECUTED THIS the 23rd day of December, A.D., 1981.

/s/ Thelma Barham

(Jurat omitted in printing)

EXHIBIT "D"

LETTERS OF ADMINISTRATION

(Filed December 28, 1981)

The State of Texas)	No. 486
)	In County Court
County of Reagan)	Reagan County, Texas

I, Hazel S. Carr, Clerk of the County Court of Reagan County, Texas, do hereby certify that on the 3rd day of January, A.D., 1977, Princess Ann Ricker Campbell was by said Court granted Letters of Administration upon the Estate of Prince Ricker deceased, and that on the 10th day of January A.D., 1977, she duly qualified as such as required by law and that said appointment is still in full force and effect.

Given under my hand and seal of said court, at Big Lake, Texas, this 28th day of April A.D. 1977.

Hazel S. Carr, Clerk,
County Court, Reagan County, Texas.
By _____ Deputy.

(SEAL)

(Caption of District Court omitted in printing)

AFFIDAVIT

(Filed January 8, 1982)

In opposition to the motion of Defendant for summary judgment in the above styled and numbered cause, the undersigned affiant makes this affidavit and hereby on oath states the following:

I am over 21 years of age and am of sound mind, have never been convicted of any crime or offense and have personal knowledge of every statement herein and am fully competent to testify to the matters stated herein.

My name is ANNABEL BARKER. On or about November 24 or November 27, 1957, I was married to PRINCE RUPERT RICKER in Juarez, Mexico. I was not married to any other person at the time of my marriage to PRINCE RUPERT RICKER, and so far as I know or knew at the time of my marriage to PRINCE RUPERT RICKER, the said PRINCE RUPERT RICKER was not married to any one else. After my marriage to PRINCE RUPERT RICKER, I gave birth to his daughter, whose name is now DELYNDY ANN RICKER BARKER REED, and who is the Plaintiff in the above styled and numbered cause. I did not have sexual relations with any man other than PRINCE RUPERT RICKER for at least one year prior to the date of birth of his daughter, the said DELYNDY ANN RICKER BARKER REED. I provided for all of the support of the said daughter of PRINCE RUPERT RICKER prior to the time of his death, in an amount in excess of \$21,000.00, and DELYNDY ANN BARKER REED is entitled to recover of and from the Estate of

PRINCE RUPERT RICKER, Deceased, the sum of at least \$21,000.00 as child support.

/s/ Annabel Barker

(Jurat omitted in printing)

(Caption of District Court omitted in printing)

PLAINTIFF'S THIRD AMENDED RESPONSE
TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

(Filed March 12, 1982)

In opposition to the motion of Defendant, PRINCESS ANN RICKER CAMPBELL, Individually and as Administratrix of the Estate of PRINCE RICKER, Deceased, for summary judgment in the above styled and numbered cause, Plaintiff, DELYNDIA ANN RICKER BARKER REED, submits this her amended response to such motion.

Plaintiff objects and excepts to Defendant's motion for summary judgment in that it fails to state the specific grounds therefor, as required by Rule 166-A of the Texas Rules of Civil Procedure, and presents Plaintiff without adequate information for opposing the motion.

Plaintiff further objects and excepts to Defendant's motion for summary judgment, and specifically to the affidavit of Thelma Barham filed in support of such motion, in that such supporting affidavit does not purport to be made on personal knowledge and does not affirmatively show that the affiant is competent to testify to the matters stated therein, all as required by Rule 166-A of the Texas Rules of Civil Procedure.

Affidavits of Roger D. Brown and Annabel Barker are attached hereto and made a part hereof for all purposes, and are submitted in opposition to Defendant's motion for summary judgment. Pages 29, 30, 31, 44, and 51 of the deposition of Cinderette McDaniel, pages 8 and 12

of the deposition of Rube Ricker, and pages 16, 17, 18, 19, and 20 of the deposition of Dr. Reginald McDaniel are hereby incorporated herein by reference and made a part hereof for all purposes. Plaintiff would show that the pleadings, together with the attached affidavits and depositions filed herein, show that the following genuine issues as to material facts are in dispute and that the Defendant, the moving party, is not entitled to judgment as a matter of law:

(1) Was there a ceremonial marriage between Annabel Boutwell and Prince Rupert Ricker on or about November 24, 1957, which became valid immediately, or when any impediment to the validity of their marriage was removed by the alleged divorce of Prince Rupert Ricker from Alice Rosemary Ricker on or about February 28, 1958?

(2) Was there an actual or putative marriage between Annabel Boutwell and Prince Rupert Ricker on or about November 24, 1957?

(3) Was there a valid common law marriage between Annabel Boutwell and Prince Rupert Ricker after any alleged divorce of Prince Rupert Ricker from Alice Rosemary Ricker on or about February 28, 1958?

(4) Is the Plaintiff a child of Decedent, PRINCE RUPERT RICKER?

(5) Is the Plaintiff a legitimate child of Decedent, PRINCE RUPERT RICKER?

(6) What amount of child support, if any, is the Plaintiff entitled to from the Estate of PRINCE RUPERT RICKER, Deceased?

(7) Was a suit filed by the Plaintiff, Plaintiff's mother, or any other representative of the Plaintiff, to establish that the Plaintiff was and is the child of PRINCE RUPERT RICKER, Deceased, and what was the date of filing such suit?

(8) Was Plaintiff conceived or born prior to, during, or within a reasonable time after, the ceremonial, common law, or putative marriage of PRINCE RUPERT RICKER and ANNABEL BOUTWELL?

Plaintiff would further show the Court that the motion for summary judgment filed by the Defendant was filed solely for the purpose of delay, and Plaintiff is therefore entitled to a recovery of reasonable attorney fees upon hearing of the Defendant's motion.

WHEREFORE, Plaintiff prays that upon hearing on Defendant's motion for summary judgment, that said motion be in all things denied and that Plaintiff be awarded reasonable attorney fees in connection with these summary judgment proceedings.

/s/Roger D. Brown

Attorney for Plaintiff,
DELYNDA ANN RICKER
BARKER REED

(Caption of District Court omitted in printing)

AFFIDAVIT

In opposition to the motion of Defendant for summary judgment in the above styled and numbered cause,

the undersigned affiant makes this affidavit and hereby on oath states the following:

I am over 21 years of age and am of sound mind, have never been convicted of any crime or offense and have personal knowledge of every statement herein and am fully competent to testify to the matters stated herein.

My name is ANNABEL BARKER. On or about November 24 or 27, 1957, I was married to PRINCE RUPERT RICKER in Juarez, Mexico. I lived with him as husband and wife from November 24 or 27, 1957, to August, 1958. I was not married to any other person at the time of my marriage to PRINCE RUPERT RICKER, and so far as I know or knew at the time of my marriage to PRINCE RUPERT RICKER, the said PRINCE RUPERT RICKER was not married to any one else. During my marriage to PRINCE RUPERT RICKER, I gave birth to his daughter on November 1, 1958, whose name is now DELYNDIA ANN RICKER BARKER REED, and who is the Plaintiff in the above styled and numbered cause. I did not have sexual relations with any man other than PRINCE RUPERT RICKER for at least one year prior to the date of birth of his daughter, the said DELYNDIA ANN RICKER BARKER REED. I provided for all of the support of the said daughter of PRINCE RUPERT RICKER prior to the time of his death, in an amount in excess of \$21,000.00, and DELYNDIA ANN RICKER BARKER REED is entitled to recover of and from the Estate of PRINCE RUPERT RICKER, Deceased, the sum of at least \$21,000.00 as child support.

/s/ Annabel Barker

(Jurat omitted in printing)

(Caption of District Court omitted in printing)

AFFIDAVIT

In opposition to the motion of Defendant for summary judgment in the above styled and numbered cause, the undersigned affiant makes this affidavit and hereby on oath states the following:

I am over 21 years of age and am of sound mind, have never been convicted of any crime or offense and have personal knowledge of every statement herein and am fully competent to testify to the matters stated herein.

My name is ROGER D. BROWN, and I am the attorney for the Plaintiff in the above styled and numbered cause, DELYNDIA ANN RICKER BARKER REED. On or about February 16, 1978, in Cause No. 486, in the County Court of Reagan County, Texas, I filed, on behalf of the Plaintiff, DELYNDIA ANN RICKER BARKER REED, a claim against the Estate of PRINCE RUPERT RICKER, Deceased, in which the said Plaintiff claimed to be the minor child of the said Decedent, praying for child support in the amount of \$21,000.00. On or about July 15, 1978, I filed, on behalf of the Plaintiff, DELYNDIA ANN RICKER BARKER REED, an original petition in the 83rd Judicial District Court of Reagan County, Texas, in Cause No. 2567, in which DELYNDIA ANN RICKER BARKER REED claims to be the minor child of PRINCE RUPERT RICKER, Deceased, as a result of a marriage between the said Decedent and ANNABEL BARKER, which marriage is alleged to have taken place in Juarez, Mexico, on or about November 24 or 27, 1957. The above two suits were subsequently consolidated, because, as recognized in Para-

graph 4 of Defendant's motion for summary judgment, "Both pending actions involve the same parties and both of said suits sought to establish the Plaintiff as a lawful heir to the Estate of PRINCE RUPERT RICKER, Deceased, and Plaintiff's respective claims against an interest in and to said Estate, being certain mineral interests in lands." The pleadings in the suits filed by me, and the order of consolidation, all referred to above, are among the Court's file in this cause, and are hereby referred to and incorporated herein.

/s/ Roger D. Brown
(Jurat omitted in printing)

(Caption of District Court omitted in printing)

AMENDED

APPLICATION TO DETERMINE HEIRSHIP

(Filed September 7, 1982)

TO THE HONORABLE JUDGE OF SAID COURT:

DELYNDA ANN RICKER BARKER REED, Petitioner herein, is a resident of Big Spring, Howard County, Texas, and is a surviving daughter of PRINCE RICKER, Deceased, who died intestate on December 22, 1976, in Kerr County, Texas.

The names and residences of decedent's heirs, all of whom are named herein as Petitioner or Respondents, are:

Princess Ann Ricker Campbell	1203 Mimosa, Odessa, Texas, 79760
Rosemary Jane Ricker	Residence Unknown
Prince Ricker, Jr.	Residence Unknown
Brett Drayton Ricker	Residence Unknown
Mark Ricker	Residence Unknown
Delynda Ann Ricker Barker Reed	Sterling City, Rt., Box 1603, Big Spring, Texas 79720

Petitioner is the natural and legitimate child of PRINCE RICKER. On or about the 24th or 27th day of November, 1957, Petitioner's mother, now ANNABEL BARKER, was ceremonially married to Prince Ricker in Juarez, Mexico, at which time the said PRINCE RICKER and Petitioner's mother agreed to then and thereafter be husband and wife. After such marriage, the said PRINCE RICKER and ANNABEL BARKER established residence at 200 North Goliad Street, in Big Spring,

Howard County, Texas, and lived together as husband and wife, had sexual relations together as husband and wife, and held themselves out to the public as husband and wife until June, 1958, at which time they separated. At the time of such separation, ANNABEL BARKER was pregnant with Petitioner as a result of her sexual relationship with PRINCE RICKER after the date of her ceremonial marriage to PRINCE RICKER. For a period of at least one year prior to the date of birth of Petitioner, which occurred on the 1st day of November, 1958, ANNABEL BARKER had no sexual relations with anyone other than PRINCE RICKER.

At the time of the ceremonial marriage between PRINCE RICKER and ANNABEL BARKER, ANNABEL BARKER was aware that PRINCE RICKER had been previously married to another woman, but had been assured by PRINCE RICKER that such earlier marriage had been terminated by divorce. At the time of the ceremonial marriage, and thereafter while they lived together and held themselves out to the public as husband and wife, Petitioner's mother believed in good faith that she was legally married to PRINCE RICKER and that there was no impediment to such marriage. Such good faith belief on the part of Petitioner's mother continued on until some time after the date of separation of PRINCE RICKER and ANNABEL BARKER. Many years after such separation, and after this suit was filed, Petitioner's mother was advised that PRINCE RICKER had not been divorced from Alice Rosemary Ricker until on or about February 28, 1958.

If Petitioner is mistaken in her belief that the ceremonial marriage between her mother and PRINCE RICKER was a valid marriage upon the date of such marriage,

because of the unterminated marriage of PRINCE RICKER to Alice Rosemary Ricker, then Petitioner would show that the ceremonial marriage became a valid marriage when the legal impediment to such ceremonial marriage was removed by the divorce of PRINCE RICKER from Alice Rosemary Ricker on or about February 28, 1958.

In the alternative, if the ceremonial marriage was not a valid marriage for any reason, the common law marriage between Petitioner's mother and PRINCE RICKER which resulted from their agreement to be husband and wife, their living together in a conjugal relationship as husband and wife, and their holding themselves out to the public as husband and wife, became a valid common law marriage on and after February 28, 1958, the date of the divorce of PRINCE RICKER from Alice Rosemary Ricker.

In the event that either or both the ceremonial marriage or the common law marriage between Petitioner's mother and PRINCE RICKER were invalid, Petitioner would show that she is still the legitimate child of PRINCE RICKER and entitled to inherit from him, as the child of a putative marriage, because her mother entered into a marriage relationship with PRINCE RICKER, either ceremonial or common law, in good faith, believing PRINCE RICKER to be unmarried, and subsequently had a child by him. Petitioner is therefore a legitimate child of PRINCE RICKER and entitled to inherit from him as such, under the laws of the State of Texas.

On the date of Decedent's death, he owned the following described real and personal property:

- (1) A 2,880 acre ranch, legally described as Sections 37 and 46, Block "A", L&SV Ry. Co. Survey;

and the E/2 of Section 7, all of Section 5, and all of Section 6, Block "O", GC&SF Ry. Co. Survey; all in Reagan County, Texas

and other real properties, the extent, nature, and location of which are unknown to Petitioner;

(2) Mortgages, notes, and cash totaling \$52,136.00, and other personal properties, the extent, nature, and location of which are unknown to Petitioner.

Petitioner herein owns an interest in and to all of the above described estate, and Petitioner and Respondents named herein are the sole and only heirs of said Decedent.

The true and correct shares of Petitioner and of each of the heirs named as Respondents herein in the estate of the Decedent are as follows:

Princess Ann Ricker Campbell	1/6th
Rosemary Jane Ricker	1/6th
Prince Ricker, Jr.	1/6th
Brett Drayton Ricker	1/6th
Mark Ricker	1/6th
Delynda Ann Ricker Barker Reed	1/6th

WHEREFORE, Petitioner prays that on final hearing hereof, this court determine, declare, and adjudge who are the heirs and only heirs of the Decedent, PRINCE RICKER; that the Court in particular, determine, declare, and adjudge that Petitioner has a 1/6th interest in

and to the estate of the Decedent; and for such other relief to which she may be entitled.

/s/ DELYND A ANN RICKER
BARKER REED

PETITIONER

ROGER D. BROWN, P.C.
P. O. Box 672
Big Spring, Texas 79720

/s/ Roger D. Brown,
Bar Card #031-66000

ATTORNEY FOR PETITIONER

(Jurat omitted in printing)

(Caption of District Court omitted in printing)

MOTION FOR NON-SUIT

(Filed September 7, 1982)

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, DELYNDA ANN RICKER BARKER REED, the Petitioner in the above entitled and numbered cause, and respectfully moves the Court to enter its Order of Non-Suit for the portion of Petitioner's lawsuit filed as a Claim in the Probate Court of Reagan County, Texas, for child support, which Claim was denied, and the Petitioner appealed by filing her Petition based upon said Claim in the District Court of Reagan County, Texas, appealing such denial. Copies of the Claim filed in Probate Court and the Petition filed in District Court are attached hereto and marked Exhibits "A" and "B" respectively.

Respectfully submitted,

ROGER D. BROWN, P.C.

P.O. Box 672

Big Spring, Texas 79720

/s/ Roger D. Brown
Bar Card #031-66000

ATTORNEY FOR PETITIONER

ORDER OF NON-SUIT

On this the 13th day of September, 1982, came on to be considered by the Court the foregoing Motion for Non-Suit filed by Plaintiff, and the Court therefore grants same.

IT IS THEREFORE, ORDERED by the Court that the portion of Petitioner's lawsuit filed as a Claim in the Probate Court of Reagan County, Texas, for child sup-

port, which Claim was denied (and the Petitioner appealed by filing her Petition based upon said Claim in the District Court of Reagan County, Texas, appealing such denial), be and it is hereby dismissed without prejudice to the Petitioner to pursue her cause of action elsewhere. All costs in this connection are taxed against the Petitioner.

/s/ William H. Earney
Judge Presiding

(Caption of District Court omitted in printing)

CHARGE OF THE COURT

(Filed September 17, 1982)

MEMBERS OF THE JURY:

This case is submitted to you on Special Issues consisting of specific questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this Charge. In discharging your responsibility on this Jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

Do not let bias, prejudice or sympathy play any part in your deliberations.

In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the Court, that is, what you have seen and heard in this Courtroom, together with the law as given you by the Court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.

Since every answer that is required by the Charge is important, no Juror should state or consider that any required answer is not important.

You must not decide who you think should win, and then try to answer the questions accordingly. Simply

answer the questions, and do not discuss nor concern yourselves with the effect of your answers.

You will not decide an issue by lot or drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the Jurors agree to abide by the result to be reached by adding together each Juror's figures and dividing by the number of Jurors to get an average. Do not do any trading on your answers; that is, one Juror should not agree to answer a certain question one way if others will agree to answer another question another way.

You may render your verdict upon the vote of ten or more members of the Jury. The same ten or more of you must agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten Jurors. If the verdict and all of the answers therein are reached by unanimous agreement, the Foreman shall sign the verdict for the entire Jury. If any Juror disagrees as to any answer made by the verdict, those Jurors who agree to all findings shall each sign the verdict.

Hold yourselves apart from the lawyers, the witnesses, and the parties to the suit. They are compelled to hold themselves apart from you, and they understand your aloofness.

These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the Judge. If it should be found that you have disregarded any of these instructions, it will

be Jury misconduct and it may require another trial by another Jury; then all of our time will have been wasted.

The Foreman or any other Juror who observes a violation of the Court's instructions shall immediately warn the one who is violating the same and caution the Juror not to do so again.

When words are used in Special Issues in a sense which varies from the meaning commonly understood, you will be given in this Charge a proper legal definition, which you are bound to accept in place of any other definition or meaning.

The Special Issues usually begin with the phrase "Do you find from a preponderance of the evidence" that a certain event, act, omission or transaction took place. "Preponderance of the Evidence" means the greater weight and degree of credible testimony or evidence before you and admitted in evidence in this case.

You are instructed that you are not to allow yourselves to be influenced in any degree whatsoever by what you may think or surmise the opinion of the Court to be. The Court has no right by any word or act to indicate any opinion respecting any matter of fact involved in this case, nor to indicate any desire respecting its outcome. The Court has not intended to express any opinion upon any matter of fact in this case, and if you have observed anything which you have or may interpret as the Court's opinion upon any matter of fact in this case, you must wholly disregard it.

You are the exclusive judges of the credibility of the witnesses and the weight to be given their testimony.

You are instructed that in this case parties to this suit are not permitted by the law to give evidence relating to any transaction or conversation with, or statement by, Prince Rupert Ricker, deceased, unless the said parties are called to testify by the opposite party.

DEFINITIONS

- (1) By "an agreement to be husband and wife" is meant that the parties have a present intention to assume that relation.
- (2) By "living together as husband and wife" as that term is used in this Charge, is meant living together in the relationship of husband and wife.

SPECIAL ISSUE NO. 1

DO YOU FIND FROM A PREPONDERANCE OF THE EVIDENCE THAT DELYND A ANN RICKER BARKER REED IS THE CHILD OF PRINCE RUPERT RICKER?

ANSWER "YES" OR "NO".

ANSWER: YES.

(Eleven Jury Signatures omitted in printing)

SPECIAL ISSUE NO. 2

DO YOU FIND FROM A PREPONDERANCE OF THE EVIDENCE THAT ANNABEL BOUTWELL AND PRINCE RUPERT RICKER ENTERED INTO A CEREMONIAL MARRIAGE ON OR ABOUT THE 24TH OR 27TH DAY OF NOVEMBER, 1957?

ANSWER "YES" OR "NO".

ANSWER: YES.

(Eleven Jury Signatures omitted in printing)

SPECIAL ISSUE NO. 3

DO YOU FIND FROM A PREPONDERANCE OF THE EVIDENCE THAT ON OR ABOUT THE 24TH OR 27TH DAY OF NOVEMBER, 1957, ANNABEL BOUTWELL AND PRINCE RUPERT RICKER AGREED THAT THEY WOULD BE HUSBAND AND WIFE?

ANSWER "YES" OR "NO".

ANSWER: YES.

(Eleven Jury Signatures omitted in printing)

SPECIAL ISSUE NO. 4

DO YOU FIND FROM A PREPONDERANCE OF THE EVIDENCE THAT ON OR AFTER THE 24TH OR 27TH DAY OF NOVEMBER, 1957, ANNABEL BOUTWELL AND PRINCE RUPERT RICKER LIVED TOGETHER AS HUSBAND AND WIFE UNTIL JUNE, 1958?

ANSWER "YES" OR "NO".

ANSWER: NO.

(One Jury Signature omitted in printing)

SPECIAL ISSUE NO. 5

DO YOU FIND FROM A PREPONDERANCE OF THE EVIDENCE THAT AFTER THE 24TH OR 27TH DAY OF NOVEMBER, 1957, ANNABEL BOUTWELL AND PRINCE RUPERT RICKER HELD THEMSELVES OUT TO THE PUBLIC AS HUSBAND AND WIFE UNTIL JUNE, 1958?

ANSWER "YES" OR "NO".

ANSWER: NO.

(Eleven Jury Signatures omitted in printing)

SPECIAL ISSUE NO. 6

DO YOU FIND FROM A PREPONDERANCE OF THE EVIDENCE THAT ON NOVEMBER 24TH OR 27TH, 1957, ANNABEL BOUTWELL BELIEVED PRINCE RUPERT RICKER TO BE UNMARRIED?

ANSWER: "SHE BELIEVED HE WAS UNMARRIED" OR "SHE BELIEVED HE WAS MARRIED".

ANSWER: SHE BELIEVED HE WAS MARRIED.

(One Jury Signature omitted in printing)

After you retire to the Juryroom, you will select your own Foreman. The first thing the Foreman will do is to have the complete Charge read aloud and then you will deliberate upon your answers to the questions asked.

It is the duty of the Foreman:

To preside during your deliberations;

To see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this Charge;

To write out and hand to the Bailiff any communication concerning the case which you desire to have delivered to the Judge;

To vote on the issues;

To write your answers to the issues in the spaces provided; and,

To certify to your verdict in the space provided for the Foreman's signature, or to have the same signed by those members of the Jury agreeing to such verdict, if less than unanimous.

After you have retired to consider your verdict, no one has any authority to communicate with you except the Bailiff or this Court. You should not discuss the case with anyone, not even other members of the Jury, unless all of you are present and assembled in the Juryroom. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the Courthouse, at your home or elsewhere, please inform the Judge of this fact.

When you have answered all of the foregoing Special Issues which you are required to answer under the instructions of the Judge, and your Foreman has placed your answers in the spaces provided, and the verdict has been signed in accordance with these instructions, you will advise the Bailiff at the door of the Juryroom that you

have reached a verdict, and then you will return into Court with your verdict.

/s/ William H. Earney
Judge Presiding

CERTIFICATE

(Filed September 17, 1982)

We, the Jury, have answered the above and foregoing Special Issues as herein indicated, and herewith return same into Court as our verdict.

/s/ Robert J. Moore
Foreman

(Eleven additional Jury Signatures omitted in printing)

[Questions from the jury and judge's response]

If we answered Yes to Issue #1, Does Issue 2, 3, 4, 5 & 6 be answered Yes?

Foreman
Jim Moore

William H. Earney Judge
1:40 PM

I can only offer you to the Charge as given and you should answer *each* question according to the evidence and not according to how you answer any other question.

Do we have to answer Yes or No to all questions?

You are to answer all the questions with one or the other of the listed answers. The foreman should sign this note.

William H. Earney Judge
1:25 P.M.

(Caption of District Court omitted in printing)
 MOTION FOR JUDGMENT ON THE VERDICT
 (Filed September 27, 1982)

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Defendant, PRINCESS ANN RICKER CAMPBELL, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF PRINCE RICKER, DECEASED, in the above entitled and numbered cause, and files this its Motion for Judgment on the Verdict, showing the Court that the findings of the Jury, in response to Special Issues submitted to them, entitle this Defendant to Judgment against the Plaintiff, DELYNDIA ANN RICKER BARKER REED, and that it be decreed by the Court that Plaintiff take nothing by her suit and that Defendant go hence with its costs.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the Court make the findings in its behalf and render such Judgment in its behalf.

RESPECTFULLY SUBMITTED,
 SHAFER, GILLILAND, DAVIS,
 McCOLLUM & ASHLEY, INC.
 P.O. Drawer 1552
 Odessa, Texas 79760
 (915/332-0893)

By: /s/ Paul McCollum
 State Bar No. 13436000

ATTORNEYS FOR THE
 DEFENDANT

(Certificate of Service omitted in printing)

(Caption of District Court omitted in printing)
 MOTION FOR JUDGMENT ON THE VERDICT,
 AND TO DISREGARD ANSWERS OF JURY TO
 CERTAIN SPECIAL ISSUES, AND
 ALTERNATIVELY, FOR JUDGMENT
 NON OBSTANTE VERDICTO

(Filed October 19, 1982)

TO THE HONORABLE JUDGE OF SAID COURT:

Delynda Ann Ricker Barker Reed, Plaintiff in the above-entitled cause, moves the Court to enter judgment in favor of Plaintiff on the findings of the jury in response to Special Issue Number 1; to disregard the findings of the jury on Special Issues Number 4 and 5; to harmonize the answer to Special Issue Number 6 with the answers to Special Issues Number 1, 2, and 3, and with Special Issues Number 4 and 5 since living together and holding themselves out to the public as husband and wife was established by all the evidence; and in the alternative for Judgment Non Obstante Verdicto, and as grounds therefore would respectfully show:

I.

Heretofore in the trial of this cause the Court submitted the case to the jury upon special issues, and the jury returned their findings upon such special issues, which findings were received by the Court and filed and entered on the minutes of the Court. The issues submitted to the jury and the findings thereon are as follows:

Special Issue Number 1:

"Do you find from a preponderance of the evidence that Delynda Ann Ricker Barker Reed is the child of Prince Rupert Ricker?" Jury's answer: "YES."

Special Issue Number 2:

"Do you find from a preponderance of the evidence that Annabel Boutwell and Prince Rupert Ricker entered into a ceremonial marriage on or about the 24th or 27th day of November, 1957?" Jury's answer: "YES."

Special Issue Number 3:

"Do you find from a preponderance of the evidence that on or about the 24th or 27th day of November, 1957, Annabel Boutwell and Prince Rupert Ricker agreed that they would be husband and wife?" Jury's answer: "YES."

Special Issue Number 4:

"Do you find from a preponderance of the evidence that on or after the 24th or 27th day of November, 1957, Annabel Boutwell and Prince Rupert Ricker lived together as husband and wife until June, 1958?" Jury's answer: "NO."

Special Issue Number 5:

"Do you find from a preponderance of the evidence that after the 24th or 27th day November, 1957, Annabel Boutwell and Prince Rupert Ricker held themselves out to the public as husband and wife until June, 1958?" Jury's answer: "NO."

Special Issue Number 6:

"Do you find from a preponderance of the evidence that on November 24 or 27, 1957, Annabel Boutwell believed Prince Rupert Ricker to be unmarried?" Jury's answer: "SHE BELIEVED HE WAS MARRIED."

II.

The jury's answer of "YES" to Special Issue Number 1 is supported by a preponderance of the evidence and entitles the Plaintiff to Judgment regardless of her status as legitimate or illegitimate. In this connection, Special Issues Number 2, 3, 4, 5, and 6, are immaterial. Plaintiff has been adjudicated the child of Prince Rupert Ricker, deceased, and is entitled to judgment regardless of her status as legitimate or illegitimate. Inquiry as to marriage between Annabel Boutwell and Prince Rupert Ricker is therefore immaterial.

III.

The jury's answer of "YES" to Special Issues Number 2 and 3 of the Court's charge is supported by a preponderance of the evidence and entitle Plaintiff to judgment as the legitimate child of Prince Rupert Ricker.

IV.

Special Issues Number 4, 5, and 6 are immaterial in that there occurred a ceremonial marriage accompanied by an agreement to be married. Plaintiff is entitled to inherit as the legitimate child of Prince Rupert Ricker so inquiry as to whether a common-law or putative marriage occurred between Annabel Boutwell and Prince Rupert Ricker is immaterial.

V.

WHEREFORE, this Plaintiff requests that notice of this motion be given as required by law, that on hearing of the same the findings of the jury in answer to Special Issues Number 4, 5 and 6 or Special Issues Number 3, 4, 5

and 6 be disregarded, that judgment be entered for this Plaintiff upon the remaining findings of the jury, and that such other and further relief be granted, at law or in equity, as to which this movant may by this motion or proper amendment thereto show herself justly entitled.

MOTION TO DISREGARD ANSWERS OF JURY TO CERTAIN SPECIAL ISSUES

In the alternative, Delynda Ann Ricker Barker Reed, Plaintiff, in the above-entitled cause, moves the Court to disregard the findings of the jury on Special Issues Number 4, 5, and 6, and to enter judgment for this Plaintiff upon the remaining findings of the jury, and in support thereof shows the Court the following:

VI.

The jury's finding in response to Special Issue Number 4 should be disregarded because the evidence proves conclusively that Annabel Boutwell and Prince Rupert Ricker lived together as husband and wife and Special Issue Number 4 should not have been submitted to the jury.

VII.

Special Issue Number 4 is immaterial in that Plaintiff's entitlement to judgment was not governed by her legitimacy and therefore inquiry as to whether a marriage occurred between Annabel Boutwell and Prince Rupert Ricker is immaterial.

VIII.

The jury's finding in response to Special Issue Number 5 should be disregarded because the evidence proves

conclusively that Annabel Boutwell and Prince Rupert Ricker held themselves out to the public as husband and wife and Special Issue Number 5 should not have been submitted to the jury.

IX.

Special Issue Number 5 is immaterial in that Plaintiff's entitlement to judgment was not governed by her legitimacy and therefore inquiry as to whether a marriage occurred between Annabel Boutwell and Prince Rupert Ricker is immaterial.

X.

The jury's finding in response to Special Issue Number 6 can be harmonized with Special Issues Numbers 2 and 3 in that one November 24 or 27, 1957, Annabel Boutwell believed that Prince Rupert Ricker was married to her, rather than someone else.

XI.

Special Issue Number 6 is immaterial in that Plaintiff's entitlement to judgment was not governed by her legitimacy and therefore inquiry as to whether a marriage occurred between Annabel Boutwell and Prince Rupert Ricker is immaterial.

WHEREFORE, this Plaintiff requests that notice of this motion be given as required by law, that on hearing of the same the findings of the jury and answer to Special Issues Number 4, 5, and 6 be disregarded, that judgment be entered for this Plaintiff upon the remaining findings of the jury, and that such other and further relief be granted, at law or in equity, as to which this movement

made by this motion or proper amendment thereto show herself justly entitled.

MOTION FOR JUDGMENT NON OBSTANTE
VERDICTO AND TO DISREGARD ANSWERS OF
JURY TO CERTAIN SPECIAL ISSUES

In the alternative, Delynda Ann Ricker Barker Reed, Plaintiff, in the above-entitled cause, moves the Court for Judgment Non Obstante Verdicto, and as grounds therefore shows:

XII.

The Court submitted this case to the jury upon special issues, and the jury returned their findings upon such special issues which findings were received by the Court, and filed and entered on the minutes of this Court. The issues submitted to the jury and findings thereon are incorporated herein as if fully set forth at length. The Court erred in submitting the case to the jury, because no material issue of fact was raised by the evidence and a directed verdict for Plaintiff would have been proper for the reasons set forth specifically in the following paragraphs.

XIII.

The Court should enter judgment for Plaintiff notwithstanding the verdict for the reasons that the evidence proves conclusively that Delynda Ann Ricker Barker Reed was the child of Prince Rupert Ricker; the evidence proved conclusively that Annabel Boutwell and Prince Rupert Ricker entered into a ceremonial marriage; the evidence proved conclusively that Annabel Boutwell and Prince Rupert Ricker agreed that they would be husband and

wife; the evidence proved conclusively Annabel Boutwell and Prince Rupert Ricker lived together as husband and wife; the evidence proved conclusively Annabel Boutwell and Prince Rupert Ricker held themselves out to the public as husband and wife; and the evidence proved conclusively that Annabel Boutwell believed Prince Rupert to be married to herself on November 24 or 27, 1957.

XIV.

The Court should enter judgment for the Plaintiff for the reason that once Plaintiff was established as the child of Prince Rupert Ricker, she was entitled to judgment regardless of her status as legitimate or illegitimate and therefore inquiry as to whether a marriage occurred between Annabel Boutwell and Prince Rupert Ricker is immaterial. Therefore, a directed verdict for the Plaintiff would have been proper.

WHEREFORE, Plaintiff requests that the Court disregard the above jury findings and enter a judgment non obstante verdicto for this Plaintiff, and for such other and further relief, at law or in equity, as to which this movant made by this motion or proper amendment thereto show herself justly entitled.

Respectfully submitted,

BANCROFT, MOULTON & MITCHEL

By: /s/ Ben Bancroft
Attorney for Plaintiff

(Unexecuted Orders omitted in printing)

(Certificate of Delivery omitted in printing)

(Caption of District Court omitted in printing)

DEFENDANT'S RESPONSE TO PLAINTIFF'S
MOTION FOR JUDGMENT ON THE VERDICT,
AND TO DISREGARD ANSWERS OF JURY TO
CERTAIN SPECIAL ISSUES, AND ALTERNATELY,
FOR JUDGMENT NON OBSTANTE VERDICTO

(Filed November 1, 1982)

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendant, PRINCESS ANN RICKER CAMPBELL, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF PRINCE RUPERT RICKER, DECEASED, and files this its Response to Plaintiff's Motion for Judgment on the Verdict, and to Disregard Answers of Jury to Certain Special Issues, and Alternatively, for Judgment Non Obstante Verdicto, and would respectfully show to the Court as follows:

In response to Plaintiff's Motion for Judgment on the Verdict, set out in Paragraphs I through V of Plaintiff's Motion, Defendant would respectfully respond as follows:

I.

Plaintiff, in Paragraph II of her Motion for Judgment on the Verdict and to Disregard Answers of Jury to Certain Special Issues, and Alternatively for Judgment Non Obstante Verdicto, seeks to have the Court enter Judgment on the Jury's finding to Special Issue Number 1, in which the Jury found Plaintiff to be the child of Prince Rupert Ricker, and seeks to have the Court disregard the other Special Issues, which are Special Issues Numbers 2, 3, 4, 5 and 6. Plaintiff says that the Jury's findings to Special Issues Numbers 2, 3, 4, 5 and 6 are

superfluous and entitled Plaintiff to a Judgment in her favor as a matter of law.

Defendant says that an affirmative finding for Plaintiff on Special Issue Number 1 alone in no way entitles Plaintiff to Judgment. The sole finding that Plaintiff was the child of Prince Rupert Ricker in no way determines the issue of whether Plaintiff was the legitimate or illegitimate child of Prince Rupert Ricker. The evidence adduced upon the trial hereof and in the certified copies of the marriage license of Prince Rupert Ricker and Alice Rosemary Lawson, evidencing their marriage in Dallas County on September 24, 1954, and their subsequent divorce in Midland County on February 28, 1958, introduced into evidence at the trial and attached to Defendant's Motion for Summary Judgment as Exhibits "A" and "B" respectively, show without contradiction that Prince Rupert Ricker was already lawfully married to Alice Rosemary Lawson at the time of the purported marriage of Prince Rupert Ricker and Annabel Boutwell on or about the 24th or 27th day of November, 1957, in Juarez, Mexico. Hence, Plaintiff could not be the legitimate child of Prince Rupert Ricker and Plaintiff's mother. A determination must be made as to the legitimacy of Plaintiff before Plaintiff can be entitled to Judgment. As a matter of law, the marriage of Prince Rupert Ricker and Annabel Boutwell was void. *Section 2.22, Texas Family Code, V.A.C.S.*

The finding by the Jury to Special Issue Number 1, that Plaintiff was the child of Prince Rupert Ricker, merely establishes Plaintiff as the illegitimate child of Prince Rupert Ricker. Under the recent decision of *Winn v.*

Lackey, 618 S.W.2d 910 (Tex. Civ.App.—Eastland 1981, ref'd n.r.e.), which is fully set out and explained in Defendant's Brief in Support of Defendant's Motion for Summary Judgment, and to which reference is hereby made, Plaintiff is not entitled to Judgment as a matter of law. Defendant says that Plaintiff's argument as set out in Paragraph II is erroneous and Plaintiff is not entitled to Judgment as a matter of law.

II.

Defendant further states that the Plaintiff is erroneous in her reasoning in Paragraphs III and IV of her motion, which urges that the Jury's answers to Special Issues Numbers 2 and 3 establish Plaintiff as the legitimate child of Prince Rupert Ricker, and therefore, the Jury's findings to Special Issues Numbers 4, 5, and 6 are immaterial and there is no need for inquiry as to whether a common-law or putative marriage existed between Annabel Boutwell and Prince Rupert Ricker.

This argument is patently fallacious for the reason that at the time of the ceremonial marriage between Annabel Boutwell and Prince Rupert Ricker on or about the 24th or 27th day of November, 1957, Prince Rupert Ricker was already lawfully married to Rosemary Jane Lawson, hence his marriage to Annabel Boutwell was void as a matter of law. *Section 2.22, Texas Family Code, V.A.C.S.* Even if the Jury's answers to Special Issues Numbers 4, 5 and 6 were disregarded by the Court, which is not urged by this Defendant, the effect of the Jury's answers to the remaining Special Issues Numbers 1, 2 and 3 would be to find Plaintiff the child of a void marriage between Anna-

bel Boutwell and Prince Rupert Ricker. Hence, Plaintiff would be the illegitimate child of Prince Rupert Ricker as a matter of law and would not be entitled to inherit from the estate of Prince Rupert Ricker under the authority of *Winn v. Lackey*, as a matter of law.

III.

Defendant would further state that after the Plaintiff and Defendant rested and closed in the trial hereon, and before submission of the Court's Charge to the Jury, both the Plaintiff and Defendant had the opportunity to make their respective objections to the Charge of the Court. No objection to the giving of any of the Special Issues was made by Plaintiff at that appropriate time, and Defendant says that it is now too late for Plaintiff to object to the giving of any of the Special Issues. Defendant states that all of the Special Issues are in conformity with each other, they present no conflict, and Defendant urges the Court to grant a take nothing Judgment in favor of this Defendant in conformity with the Jury's findings to the Special Issues.

WHEREFORE, Defendant prays the Court enter Judgment for Defendant in conformity with the Jury's answers to the Special Issues given by the Court and that Defendant be discharged with its costs.

* * *

In response to Plaintiff's Paragraphs VI, VII, VIII, IX, X and XI, wherein Plaintiff urges the Court to disregard the Jury's answers to Special Issues Numbers 4, 5 and 6, Defendant would respectfully show to the Court.

in continuation with its Response to Plaintiff's Motion, the following, to-wit:

IV.

Defendant states that there is ample support in the evidence adduced at trial to support the Jury's answers to Special Issues Numbers 4, 5 and 6.

In this lawsuit, it is incumbent upon Plaintiff to prove by a preponderance of the evidence that Plaintiff is the legitimate child of Prince Rupert Ricker in order for Plaintiff to inherit from the estate of Prince Rupert Ricker. *Winn v. Lackey*, cited supra. Because Prince Rupert Ricker was lawfully married to Rosemary Jane Lawson at the time of the Mexican ceremonial marriage of November 24 or 27, 1957, to Annabel Boutwell, it is necessary for Plaintiff to establish Plaintiff as the legitimate child of Prince Ricker. The only way that Plaintiff can do this is by proving by a preponderance of the evidence the existence of a common-law or putative marriage arising upon the dissolution of the marriage of Prince Rupert Ricker and Rosemary Jane Lawson, which marriage was dissolved by divorce in Midland County on February 28, 1958.

It was Plaintiff that requested Special Issues inquiring of the Jury of a present agreement by Prince Rupert Ricker and Annabel Boutwell to be married; of their living together as husband and wife on and after November 24 or 27, 1957; and of whether Annabel Boutwell believed Prince Rupert Ricker to be unmarried on or about November 24 or 27, 1957. These Special Issues were requested by the Plaintiff and were given by the Court. At no time prior to the submission to the Jury of the Court's Charge did Plaintiff's object to the giving of these Special Issues.

Failure to object and point out distinctly the matter to which a party objects and the grounds for such objection to any Special Issue before submission to the Jury shall cause any objection thereto to be waived. *Rules 272 and 274, Texas Rules of Civil Procedure, V.A.C.S.*

Further, Defendant says that there was ample evidence adduced upon the trial to support the giving of these Special Issues Numbers 4, 5 and 6. Without the benefit of a Statement of Facts, Defendant states the following testimony was elicited from various witnesses, which raise a fact issue, as follows:

Annabel Boutwell, Plaintiff's mother, herself admitted that she knew Prince Rupert Ricker was married when she began dating him in late August, 1957, when he was living in Stanton, Texas at the Stanton Hotel. She further admitted he kept his room at the Stanton Hotel after their "marriage" and she "lived" with him on the weekends. She further admitted that she did not know if Prince Ricker was divorced, and in late August, 1957, she knew they were still married. She admitted she took no steps to ascertain whether or not Prince Ricker and Alice Rosemary Lawson were divorced. She further admitted that he kept some things at her house and he kept some things at his room at the Stanton Hotel.

Ms. Juanita Tucker, Annabel Boutwell's maid, testified she sometimes did Prince Ricker's laundry, but did not work on the weekends, and did not actually see him living there.

Ms. Rube Ricker, Prince Ricker's mother, testified by deposition that when Annabel Boutwell showed her the Plaintiff as a small child and told Ms. Ricker that the child was Prince Rupert Ricker's child, Ms. Ricker responded by stating that it was Annabel Boutwell's word against that of her son, Prince. She further testified that she did not engage in public gossip or speculation.

Marilyn Watts, who married Prince Ricker on April 4, 1960, and was married to Prince Ricker for seven (7) years, testified that she and Prince Ricker talked about Annabel Boutwell, and Prince Ricker told her he never married Annabel Boutwell.

Rosemary Lawson Ricker Ming testified that even after she filed for a divorce of her marriage to Prince Rupert Ricker on or about November 22, 1957, she and Prince lived together from time to time and spent some weekends at the Stanton Hotel. She further testified that she knew Annabel Boutwell and talked to her after Plaintiff was born, when Annabel asked her to help support her and the Plaintiff. At no time during any of these conversations did Annabel Boutwell purport to have ever been married to Prince Ricker.

J. M. Yater, a teacher in the public school system where Prince Ricker taught from the school year 1957 to 1958 testified that he never heard Prince Ricker mention that he was married and further testified that he was under the impression that Prince Ricker was unmarried. He further never remembered Prince Ricker bringing a wife or girlfriend to any of the school functions.

Cindrette McDaniel, Prince Ricker's sister, filed an Heirship Affidavit in the Deed Records of Reagan County, Texas, swearing that Prince Ricker was married three (3) times during his lifetime; to Rosemary Lawson, to Jeri Laverne, and to Marilyn Salt. No mention is made of Annabel Boutwell in this affidavit. Further, a certified copy of the divorce decree of Prince Ricker and Jeri Laverne was admitted into evidence showing Prince Ricker and Jeri Laverne were married October 20, 1958, and subsequently divorced January 4, 1960 in Midland County, Texas.

Defendant states that all of this evidence is sufficient to establish fact issues for the sole determination by the Jury, and that the giving of Special Issues Numbers 3, 4, 5 and 6 by the Court was proper. Defendant says that Plaintiff should be held bound by the answers of the Jury.

WHEREFORE, Defendant prays that the Court enter Judgment for Defendant in conformity with the Jury's answers to the Special Issues given by the Court and that Defendant be discharged with its costs.

* * *

In response to Plaintiff's Motion for Judgment Non Obstante Verdicto, Plaintiff's Paragraphs XII, XIII and XIV, Defendant would respectfully show to the Court, in continuation with its Response to Plaintiff's Motion the following, to-wit:

V.

Rule 301 of the Texas Rules of Civil Procedure states in pertinent part as follows:

“Provided, that upon motion and reasonable notice the court may render judgment non obstante verdicto if a directed verdict would have been proper, and provided further that the court may, upon like motion and notice, disregard any Special Issue Jury Finding that has no support in the evidence.”

Defendant says that Judgment Non Obstante Verdicto is improper under the facts of this case. There is ample evidence in the records to support the fact issues upon which all of the Special Issues are based, some of that evidence being stated above by Defendant in this motion. The Plaintiff should be therefore bound by the Jury's answers to the Special Issues, and this Defendant hereby refers to the arguments set out above as supporting the Jury's answers to the Special Issues given in the Court's Charge.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the Court deny all of Plaintiff's motions contained in its Motion for Judgment on the Verdict, and to Disregard Answers of Jury to Certain Special Issues, and Alternatively, for Judgment Non Obstante Verdicto, for the reasons mentioned above, and Defendant further prays that the Court sign a final Judgment in this Cause for Defendant, ordering Plaintiff take nothing by her suit, and discharging this Defendant with its costs.

* * *

In further support of its position that this Defendant should be granted a take nothing judgment in its favor, Defendant would urge the following:

VI.

Defendant states that Plaintiff's suit against the Estate of Prince Rupert Ricker, Deceased, is barred by the four (4) year statute of limitations.

This Defendant recognizes that the 1975 amendment to Chapter 13 of the Texas Family Code, Art. 13.01, V.A.C.S., which states that a suit to establish paternity must be brought before the child is one (1) year old is not applicable to the case at bar, for the reason that the same is not given a retroactive application. *Alvarado v. Gonzales*, 552 S.W.2d 539 (Tex.Civ.App.—Corpus Christi 1977, no writ); *Texas Dept. of Human Resources v. Delley*, 581 S.W.2d 519 (Tex.Civ.App.—Dallas 1979, ref'd n.r.e.).

The Courts dealt with the problem of what the appropriate statute of limitations is applicable in paternity suits where the illegitimate child was born prior to the effective date of the statute (13.01) in the *Delley* case, cited *supra*.

In *Delley*, the D.H.R., assignee of the child's right to receive child support, filed suit on behalf of a nine year old child to establish the appellee as the biological father of the child. The trial court dismissed the State's suit with prejudice holding the State's cause of action was barred by the four (4) year statute of limitations since the child was born more than four (4) years prior to the filing of the suit.

The Court of Civil Appeals reversed and remanded the judgment of the trial court and held that since no specific statute of limitations is designated for paternity suits concerning children born before September 1, 1975,

the effective date of Art. 13.01 of the Family Code, Article 5529, V.A.C.S., the general four (4) year statute of limitations applies and that Article 5535, which tolls limitations during minority and disability, applies in those cases of children born before September 1, 1975.

The Court further points out that "paternity suits are a prerequisite to the child support for an illegitimate child".

In the case at bar, Plaintiff filed a claim against the Estate of Prince Ricker, Deceased, for child support in the amount of \$21,000.00, which was finally dismissed by Plaintiffs on the day of trial, however, no suit for paternity has ever been brought by this Plaintiff's mother or other representative during Plaintiff's minority or by this Plaintiff, who is now an adult of 24 years. Plaintiff must have filed her paternity action against Prince Rupert Ricker or the Estate of Prince Rupert Ricker on or before November 1, 1980, which date is four (4) years after the removal of her minority. She has not.

In the case of *Bell v. Hinkle*, 607 S.W.2d 936 (Tex.Civ. App.—Hou. (14th Dist.) 1980, no writ), the Appellant Bell brought a trespass to try title suit in certain real property belonging to the Estate of James Thomas Hinkle and for partition of the real and personal property, claiming a one-half (1/2) interest in the property of the estate as an heir at law of the deceased. Appellant, Bell alleged that he was the illegitimate child of the decedant, who died in 1969 intestate. The suit by appellant was filed in 1976.

The Trial Court found that the decedant was not the biological father of Appellant, Bell, and Bell appealed.

On Appeal, the Court of Civil Appeals discussed the law prior to the 1979 amendment to Section 42 of the Texas Probate Code whereby an illegitimate child could not inherit from his father by the laws of descent and distribution. The Court then went on to hold:

"In 1979, the Legislature amended the Probate Code to allow illegitimate children to inherit from their fathers if certain conditions are fulfilled. Tex.Prob.Code Ann., Sec. 42 (Vernon Supp. 1980). An illegitimate child can inherit from his father 'if the child is born or conceived before or during the marriage of his father and mother or is legitimated by a Court decree as provided by Chapter 13 of the Family Code, or if the father executed a statement of paternity as provided by Section 13.22 of the Family Code. . . .' Since appellant has not brought a paternity suit under the Family Code, or met any of the other conditions, he cannot recover under the statute."

The Judgment of the Trial Court was affirmed.

This Defendant says that this Plaintiff has not taken the lawful steps to establish the involuntary legitimation of this child as provided by the Family Code or met any of the other conditions provided for therein, and for this reason, Plaintiff is not entitled to recover any interest in and to the Estate of Prince Rupert Ricker, Deceased. See also Texas Probate Code, Section 42, V.A.C.S. Because Plaintiff has failed in every respect to sue to establish paternity, her cause of action to establish her as an heir at law to the Estate of Prince Rupert Ricker is forever barred.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the Court deny all of Plaintiff's mo-

tions contained in its Motion for Judgment on the Verdict, and to Disregard Answers of Jury to Certain Special Issues, and Alternatively for Judgment Non Obstante Verdicto, for the reasons mentioned above, and Defendant further prays that the Court sign a final Judgment in this cause in favor of Defendant, ordering Plaintiff take nothing by her suit, and discharging this Defendant with its costs.

Respectfully submitted,

SHAFFER, GILLILAND, DAVIS, McCOLLUM
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P. O. Drawer 1552
Odessa, Texas 79760
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BY /s/ PAUL McCOLLUM
State Bar #13436000

ATTORNEYS FOR DEFENDANT

(Certificate of Service omitted in printing)

(Caption of District Court omitted in printing)

PLAINTIFF'S ORIGINAL MOTION TO SET ASIDE
AND MODIFY JUDGMENT, AND ALTERNATIVELY,
FOR NEW TRIAL

(Filed December 1, 1982)

TO THE HONORABLE JUDGE OF SAID COURT:

Delynda Ann Ricker Barker Reed, Plaintiff in the above-entitled cause, moves the Court to set aside judgment previously rendered in favor of Defendant in this cause, and to enter judgment in favor of Plaintiff on the findings of the jury in response to Special Issues Number 1, 2, 3; to harmonize the answer to Special Issue Number 6 with the answers to Special Issues Number 1, 2, and 3; to disregard the findings of the jury on Special Issues Number 4 and 5 as unsupported by evidence, and immaterial to controlling issues.

Alternatively, Plaintiff requests that the Court grant a new trial in this cause, and to declare that an irreconcilable conflict exists between the answer to Special Issue 6 and Special Issues 1, 2, and 3, and as grounds therefore would respectfully show:

I.

Heretofore in the trial of this cause the Court submitted the case to the jury upon special issues, and the jury returned their findings upon such special issues, which findings were received by the Court and filed and entered on the minutes of the Court. The issues submitted to the jury and the answers thereto are as follows:

Special Issue Number 1:

"Do you find from a preponderance of the evidence that Delynda Ann Ricker Barker Reed is the child of Prince Rupert Ricker?" Jury's answer: "YES."

Special Issue Number 2:

"Do you find from a preponderance of the evidence that Annabel Boutwell and Prince Rupert Ricker entered into a ceremonial marriage on or about the 24th or 27th day of November, 1957?" Jury's answer: "YES."

Special Issue Number 3:

"Do you find from a preponderance of the evidence that on or about the 24th or 27th day of November, 1957, Annabel Boutwell and Prince Rupert Ricker agreed that they would be husband and wife?" Jury's answer: "YES."

Special Issue No. 4:

"Do you find from a preponderance of the evidence that on or after the 24th or 27th day of November, 1957, Annabel Boutwell and Prince Rupert Ricker lived together as husband and wife until June, 1958?" Jury's answer: "NO."

Special Issue No. 5:

"Do you find from a preponderance of the evidence that after the 24th or 27th day of November, 1957, Annabel Boutwell and Prince Rupert Ricker held themselves out to the public as husband and wife until June, 1958?" Jury's answer: "NO."

Special Issue No. 6:

"Do you find from a preponderance of the evidence that on November 24 or 27, 1957, Annabel Boutwell believed Prince Rupert Ricker to be unmarried?" Jury's answer: "SHE BELIEVED HE WAS MARRIED."

II.

The Honorable Trial Court should have entered judgment for Plaintiff based upon the jury's answer to Special Issue Number 1, that Delynda Ann Ricker Barker Reed is the child of Prince Rupert Ricker. This answer is strongly supported by the evidence and entitles the Plaintiff to Judgment pursuant to the Federal and Texas doctrines of equal protection, regardless of her status as legitimate or illegitimate. In this connection, all the other Special Issues, directed to issues of legitimacy, become immaterial.

III.

The Honorable Trial Court should have entered judgment for Delynda as the legitimate heir of Prince Rupert Ricker, on the strength of the jury's answers to Special Issues Number 2 and 3, that Prince Ricker and Delynda's mother entered into a ceremonial marriage and agreed to be husband and wife on or about the 24th or 27th day of November, 1957, which date was well prior to the birth of their child, Delynda shown by her birth certificate to be November 1 of the following year. Answers 2 and 3 are amply supported by evidence and entitle Delynda to judgment as the child of Prince Rupert Ricker, legitimate through ceremonial marriage of her parents, accompanied by their agreement to be married. In this connection, inquiry by later Special Issues as to whether there was also a common-law or putative marriage between Delynda's

mother and Prince Rupert Ricker becomes immaterial, and the Honorable Trial Court should have entered judgment for Plaintiff, by disregarding the findings of the jury on Special Issues Number 4, 5, and 6, and entering judgment for Delynda based upon the valid ceremonial marriage.

IV.

The Honorable Trial Court should have entered judgment for Plaintiff by disregarding the jury's finding in response to Special Issue Number 4 because the evidence proves conclusively, and the Trial Court should have held that Annabel Boutwell and Prince Rupert Ricker lived together as husband and wife. In addition to other conclusive evidence of co-habitation, it is clear that their co-habitation, following their ceremonial marriage with agreement to be husband and wife, was sufficient to result in the conception of their child, Delynda, in the Spring of the following year. Special Issue Number 4 should not have been submitted to the jury, and should have been disregarded.

V.

The Honorable Trial Court should have entered judgment for

VI.

The Honorable Trial Court should have entered judgment for Plaintiff by harmonizing the jury's finding in response to Special Issue Number 6 with the findings in response to Special Issues 2 and 3. By its answers to Special Issues Numbers 1, 2, and 3, the jury found that Delynda's mother and father agreed on or about Novem-

ber 24th or 27th, 1957 to be husband and wife, and solemnized that agreement by the vows of the ceremonial marriage, and some months thereafter procreated their child, Delynda. The jury's answer to Special Issue Number 6, was that Delynda's mother Annabel believed that Delynda's father, Prince Rupert Ricker, was married on or about November 24th or 27th, 1957. The answer to Special Issue Number 6 can be harmonized with the jury's earlier findings, if, and only if, it is construed to mean that on the 27th or 24th of November, 1957, Annabel believed that Ricker was married *to herself*, by and because of such agreement to be husband and wife, and the vows of such ceremonial marriage. Such construction is consistent, moreover, with all the evidence concerning subsequent co-habitation and holding out of themselves by Delynda's parents as husband and wife and with the later procreation of Delynda. Answers to Special Issues Numbers 1, 2, and 3 are inconsistent, however, with the construction that on November 24 or 27, 1957, Annabel Boutwell believed that Prince Rupert Ricker was married to someone else, rather than herself, and if the answer to Special Issue Number 6 is given this construction, then a new trial should be granted in light of the conflict of Special Issues created thereby.

VII.

Plaintiff, while contending that the Special Issues support judgment for alternatively, this Honorable Trial Court should have granted Judgment Non Obstante Verdicto, as set out below:

B.1

I. The Fourteenth Amendment to the Constitution provides:

". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

II. Tex. Prob. Code §37 (Vernon 1980) provides:

"§37. Passage of Title Upon Intestacy and Under a Will

"When a person dies, leaving a lawful will, all of his estate devised or bequeathed by such will, and all powers of appointment granted in such will, shall vest immediately in the devisees or legatees of such estate and the donees of such person, not devised or powers; and all the estate of such person, not devised or bequeathed, shall vest immediately in his heirs at law; subject, however, to the payment of the debts of the testator or intestate, except such as is exempted by law, and subject to the payment of court-ordered child support payments that are delinquent on the date of the person's death; and whenever a person dies intestate, all of his estate shall vest immediately in his heirs at law, but with the exception aforesaid shall still be liable and sub-

B.2

ject in their hands to the payment of the debts of the intestate and the delinquent child support payments; but upon the issuance of letters testamentary or of administration upon any such estate, the executor or administrator shall have the right to possession of the estate as it existed at the death of the testator or intestate, with the exception aforesaid; and he shall recover possession of and hold such estate in trust to be disposed of in accordance with the law."

III. Tex. Prob. Code §42

A. As originally enacted in 1955 provided:

"§42. Inheritance Rights of Illegitimate Children

"For the purpose of inheritance to, through, and from an illegitimate child, such child shall be treated the same as if he were the legitimate child of his mother, so that he and his issue shall inherit from his mother and from his maternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him. Such child shall also be treated the same as if he were a legitimate child of his mother for the purpose of determining homestead rights, the distribution of exempt property, and the making of family allowances. Where a man, having by a woman a child or children shall afterwards intermarry with such

B.3

woman, such child or children shall thereby be legitimated and made capable of inheriting his estate. The issue also of marriages deemed null in law shall nevertheless be legitimate."

B. As Amended in 1977 provided:

"Sec. 42. Inheritance Rights of Illegitimate Children

"(a) Maternal Inheritance. For the purpose of inheritance to, through, and from an illegitimate child, such child shall be treated the same as if he were the legitimate child of his mother, so that he and his issue shall inherit from his mother and from his maternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue.

"(b) Legitimation by Marriage. Where a man, having by a woman a child shall afterwards intermarry with such woman, such child shall thereby be legitimated, so that he and his issue shall inherit from his father and from his paternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue.

"(c) Legitimation by Voluntary Legitimation Proceeding. Where a man, having by a woman a child shall afterwards legitimate the child pursuant to a voluntary legitimation proceeding under Chapter 13, Family Code, such child and his issue shall inherit from his father but not from

his paternal kindred; and the father, but not the father's kindred, shall inherit from such child and his issue.

"(d) Homestead Rights, Exempt Property, and Family Allowances. Such child shall also be treated the same as if he were a legitimate child of his mother, and, if legitimated by marriage or by voluntary legitimation, as if he were a legitimate child of his father, for the purpose of determining homestead rights, distribution of exempt property, and the making of family allowances.

"(e) Marriages Null in Law. The issue also of marriages deemed null in law shall nevertheless be legitimate."

C. -As Amended in 1979 provided:

"§ 42. Inheritance Rights of Legitimated Children

"(a) Maternal Inheritance. For the purpose of inheritance, a child is the legitimate child of his mother, so that he and his issue shall inherit from his mother and from his maternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue.

"(b) Paternal Inheritance. For the purpose of inheritance, a child is the legitimate child of his father if the child is born or conceived before or during the marriage of his father and mother or is legitimated by a court decree as provided

by Chapter 13 of the Family Code, or if the father executed a statement of paternity as provided by Section 13.22 of the Family Code, or a like statement properly executed in another jurisdiction, so that he and his issue shall inherit from his father and from his paternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from his and his issue.

"(c) Homestead Rights, Exempt Property, and Family Allowances. A legitimate child as provided by Subsections (a) and (b) of this section is a legitimate child of his mother, and a legitimate child of his father, for the purpose of determining homestead rights, distribution of exempt property, and the making of family allowances."

IV. Tex. Fam. Code §13.01

A. As Originally Enacted in 1975 provided:

"Sec. 13.01. Time Limitation of Suit

"A suit to establish the parent-child relationship between a child who is not the legitimate child of a man and the child's natural father by proof of paternity must be brought before the child is one year old, or the suit is barred."

B.6

B. As Amended in 1981 provided:

"Section 13.01. Time Limitation of Suit

"A suit to establish the parent-child relationship between a child who is not the legitimate child of a man and the child's natural father by proof of paternity must be brought before the child is four years old, or the suit is barred."

C. As Amended in 1983 provides:

"Sec. 13.01. Time Limitation of Suit. A suit to establish the parent-child relationship between a child who is not the legitimate child of a man and the child's natural father by proof of paternity must be brought on or before the second anniversary of the day the child becomes an adult, or the suit is barred.

"Section 2. A cause of action that was barred before the effective date of this Act but would not have been barred by Section 13.01, Family Code, as amended by this Act, is not barred until the period of limitations provided by Section 13.01, Family Code, as amended by this Act, has expired."

- V. Tex. Fam. Code §13.02 (Vernon Supp. 1975-1980) provides:

"§13.02 Pretrial Proceedings:
Blood Tests

"(a) When the respondent appears in a paternity suit, the court shall order the mother, alleged father, and child to submit to the taking of blood for the purpose of one or more blood tests. If the appearance is before the birth of the child, the court shall order the taking of blood to be made as soon as medically practical after the birth.

"(b) An order issued under this section is enforceable by contempt, except that if the petitioner is the mother or the alleged father and refuses to submit to the blood test, the court shall dismiss the suit. If the respondent is the mother or the alleged father and refuses to submit to the blood tests, the fact of refusal may be introduced as evidence as provided in Section 13.06(d) of this code."

INDEX TO APPENDIX C

IN ALL THESE CASES, DEATH OCCURRED
BEFORE THE TRIMBLE DECISION.

CASES IN WHICH THE TRIMBLE ANALYSIS
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THESE CASES WERE DIRECT APPEALS (NOT
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IN ALL THESE CASES, DEATH OCCURRED BEFORE THE TRIMBLE DECISION.

IN THE CASES LISTED AND BRIEFED BELOW, THE TRIMBLE ANALYSIS WAS APPLIED, THOUGH THE ISSUE OF RETROACTIVITY WAS NOT ADDRESSED. THESE CASES WERE DIRECT APPEALS (NOT COLLATERAL ATTACKS).

LIST OF CASES:

1. Trimble v. Gordon, 430 U.S. 672
(1977)
2. Lalli v. Lalli, 439 U.S. 257
(1978)
3. In Ramon v. Califano, 493 F.Supp.
158 (W.D. Tex. 1980)
4. Nagle v. Wood, 178 Conn. 180,
423 A.2d 875 (Conn. 1979)
5. Easley v. John Hancock Mutual
Life, 403 Mich. 521, 271 N.W.2d 513
(Mich. 1978)

6. In re Estate of Burris, 361 So.2d 152 (Fla. 1978)

7. Andrade v. Jackson, 401 A.2d 990 (D.C. 1979)

CASES BRIEFED:

1. Trimble v. Gordon, 430 U.S. 672 (1977), itself involved a direct appeal from the open estate. Striking the insurmountable statutory barrier, Trimble vested the father's estate in his non-marital child, to the exclusion of his collateral heirs.

2. Lalli v. Lalli, 439 U.S. 257 (1978), similarly applied the test explained in Trimble. The Lalli death occurred in 1973. Lalli distinguished the New York statutory barrier as not insurmountable.

3. Ramon v. Califano, 493 F.Supp. 158 (W.D. Tex. 1980), held invalid the insuperable barrier to heirship by illegitimates in §42 of the Texas Probate Code, holding that the claimant was therefore entitled to Social Security survivor's benefits.

4. Nagle v. Wood, 178 Conn. 180, 423 A.2d 875 (Conn. 1979), struck down the Connecticut statute, applying Trimble without retroactivity discussion. Nagle separately refused retroactive effect to a statute. The discussion of the statute's nonretroactivity was erroneously relied on in the case at hand, through Winn.

5. Easley v. John Hancock Mutual Life, 403 Mich. 521, 271 N.W.2d 513 (Mich. 1978), struck down the Michigan statute citing Trimble. The death occurred in 1970.

6. In re Estate of Burris, 361 So.2d 152 (Fla. 1978), applied Trimble to strike down the Florida statute where the death was in May of 1975.

7. Andrade v. Jackson, 401 A.2d 990 (D.C. 1979), indicated that Trimble would apply to the rights of the children after transfer of the case into the probate court, notwithstanding any invalidity of the parents marriage, at note 9.

* * *

THESE CASES ALSO AROSE ON DIRECT APPEAL,
(NOT COLLATERAL ATTACK). THE COURTS
RECOGNIZED THE RETROACTIVITY ISSUE AND
HELD TRIMBLE WOULD BE APPLIED
RETROACTIVELY.

LIST OF CASES:

1. Lovejoy v. Lillie, 569 S.W.2d 501
(Tex. Civ. App. -- Tyler 1978, writ
ref'd, n.r.e.).

2. Succession of Trosclair, 423
So.2d 745 (La. App. 1982)

3. Estate of Sharp, 163 N.J. Super.
148, 377 A.2d 730 (N.J. Ch. 1977)

4. Marshall v. Marshall 670 S.W.2d
213 (Tenn. 1984)

5. Gross v. Harris, 664 F.2d 667
(8th Cir. 1981)

CASES BRIEFED:

Each of these four cases, except the
Texas case, discussed and distinguished
the collateral attack context in finding
that Trimble would apply to a direct
appeal.

In each of these cases the analysis in Trimble was applied retroactively where the death occurred before Trimble (and also before the state decision applying Trimble in Tennessee and Louisiana). The claims in the Tennessee, New Jersey, and Eighth Circuit cases were filed after Trimble, bringing them onto all-fours with the chronology of the case at hand.

1. In Lovejoy v. Lillie, 569 S.W.2d 501 (Tex. Civ. App. -- Tyler 1978, writ ref'd, n.r.e.), Trimble was applied retroactively to pre-1977 §42 of the Texas Probate Code, the statute at hand. Rejecting the argument that Trimble should not be applied because it was decided after the application for probate, Lovejoy held that it was appropriate to apply Trimble retroactively because it was decided before judgment in the case, and

held that the stage of the proceedings when Trimble was decided was immaterial.

2. Succession of Trosclair, 423 So.2d 745 (La. App. 1982), held that the Trial Court erred in making the date of decedent's death the determining factor in applying Trimble, as adopted in Louisiana by the Brown decision. Trosclair instead recognized that the controlling factor was that the claim was presented in an open estate rather than on collateral attack.

It wrote:

Appellants maintain that the Trial Judge erred in making the date of decedent's death the determining factor. We agree. This litigation is on-going, no judgment of possession has been rendered, and that distinguishes this case from those which turn on the effective date of Brown.

This Court's concern has been the "substantial inequity [that] would result if all prior judgments of possession which relied on the substantive law of LSA-C.C. Art. 919 were declared invalid, and such a holding would engender new litigation

in each case where there had been such a justified reliance."

Succession of Ross, supra, at P. 831.

(Emphasis added) In this case no property rights have been acquired based on Art. 919, the old rule. There has been no reliance on the prior law, no prior judgments need be overturned, and no injustice or hardship will result. Instead, the equal treatment to illegitimates mandated by Brown will be accomplished. Accordingly, there is no reason to deny appellants the benefit intended by Brown if they can prove their filiation.

3. Estate of Sharp, 163 N.J. Super. 148, 377 A.2d 730 (N.J. Ch. 1977) affirmed as modified, 394 A.2d 381 (N.J. App., 1978), held that a will was void because it did not provide for the inheritance rights of an afterborn illegitimate child which were held to exist under Trimble. The district court expressly held that Trimble applied in the precise chronological posture of the case at hand.

This court simply holds that where the death was before Trimble v. Gordon but the will was not offered

for probate until after that case was decided, and where the will is so ambiguous that no beneficiary could have reasonably relied upon its terms as to the receipt of any gift, Trimble v. Gordon should be applied.

Sharp distinguished the case from one on collateral attack.

[P]rospective application may be particularly fair in a property case where persons have justifiably relied on prior law. Thus, the court does not suggest that estates of intestate male decedents who died before Trimble v. Gordon were wrongfully distributed when illegitimate children were not included. Nor does the court suggest that if a testate male decedent died before Trimble v. Gordon and failed to mention or provide for an illegitimate child born after the execution of his will, that the will, if probated before Trimble v. Gordon, should have been treated as revoked in whole or in part . . . (cites omitted).

4. Marshall v. Marshall, 670 S.W.2d 213 (Tenn. 1984) held that Trimble, as applied to the laws of Tennessee in Allen v. Harvey, should be applied retroactively in the exact chronological posture of this case. The court did so because, as in the

case at hand, the equities which attach at the closing of an estate were absent. In deciding Allen, the court allowed inheritance to the nonmarital claimant, but stated that the case would otherwise apply only prospectively and to cases pending when it was decided. On the strength of Allen, the lower Court in Marshall held that the claim was barred. The death was before Trimble and Allen, in March 1985. The claim was first brought in September 1978, after Trimble and after Allen.

Marshall was controlled by the precise factors which distinguish this case from one on collateral attack. The court held that, for a civil case to deny retrospective application of a decision overruling an earlier decision, the claimed reliance on the old rule must have been real, meaning that the litigants must have

acted in reliance. Their reliance must have further been such that the hardship resulting to them from it would affirmatively outweigh the hardship on the party denied the benefit of the new rule. The court pointed out that "Since there are few cases where such rigorous demonstrations can be made, there should be few occasions when prospective overruling can justifiably displace the normal retroactive application of the overruling decision." The court noted that the hardship of those relying on the old rule did not outweigh the hardship on the party denied the benefit of the new rule in Allen. The factors considered by the court in making this determination are those unique to a direct attack from a claim filed in open probate. The court

refused to apply the unconstitutional statute, noting:

The defendants in the present case have not acted in reliance upon the precedent overruled by Allen, they merely assert that they have passively acquired rights as the heirs at law of an intestate property owner; they are not innocent purchasers for value of the property they seek to claim; and, neither do they assert the rights of those who claim under a valid court decree that has determined the identity of the heirs at law of an intestate property owner.

Significantly to the present case, Marshall modified Allen v. Harvey, 568 S.W.2d 829 (Tenn. 1978), precisely where it was relied on by the case at hand, through Winn.

5. Gross v. Harris, 664 F.2d 667 (8th Cir. 1981), held that Trimble should be applied because of the purpose of the rule it announced. The court specifically considered the chronological context of the cases, deciding that

Trimble would be applied where the deaths were before Trimble and the claims were filed after (n.3). Gross found that the second of Chevron's requirements for prospective-only application of a decision was lacking. The court noted:

It is self-evident that the purpose of the Trimble decision was to prevent constitutionally impermissible discrimination against illegitimates. Retrospective application of Trimble would further the Trimble purpose.

Gross declined to address the issue determined by Marshall, supra, regarding the absence of reliance by other heirs and the lack of their equities, because it was not required to do so in a Social Security case.

* * *

IN DECIDING COLLATERAL ATTACKS ON CLOSED ESTATES, THESE CASES HELD TRIMBLE WOULD NOT BE APPLIED RETROACTIVELY, THEREBY PROTECTING THE FINAL JUDGMENT.

LIST OF CASES:

1. Winn v. Lackey, 618 S.W. 910
(Tex.Civ.App.--Eastland 1981, no writ).
2. Frakes v. Hunt, 266 Ark. 171, 583
S.W.2d 497 (Ark. 1979).
3. Wilson v. Jones, 281 S.C. 230,
314 S.E.2d 341 (S.C. 1984).
4. Estate of Rudder, 78 Ill. App.
3d 517, 397 N.E.2d 556 (Ill. App., 1979).
5. Herndon v. Herndon, 388 So.2d
463 (La. App. 1980).

CASES BRIEFED:

1. In Winn v. Lackey, 618 S.W. 910
(Tex.Civ.App.--Eastland 1981, no writ),

the collateral attack was a suit to partition real estate awarded by a final probate decree in two legitimate children. The court declined to apply Trimble retroactively. Winn distinguished Lovejoy on the basis that in Lovejoy the claim was brought before Trimble while in Winn it was brought after. The lower court relied heavily on Winn. Because Winn involved a closed estate, this reliance was misplaced.

2. Frakes v. Hunt, 266 Ark. 171, 583 S.W.2d 497 (Ark. 1979), was heavily relied on by Winn. In Frakes, the estate was closed but the assets were substantially intact. Citing considerations relevant only in closed estates, the court stated broadly that to apply Trimble would lead to chaos from lack of title to real property.

3. In Wilson v. Jones, 281 S.C. 230, 314 S.E.2d 341 (S.C. 1984), the collateral attack was in the form of a suit for partition of lands. The court said flatly that the unconstitutional statute would be applied to all deaths before Trimble.

4. In Estate of Rudder, 78 Ill. App. 3d 517, 397 N.E.2d 556 (Ill. App. 1979), the funds were distributed, the administrator was discharged and the estate was ordered closed before Trimble. The statutory time to re-open had lapsed. The collateral attack, filed after Trimble, was styled a "Petition to Re-Open Estate and Set Aside Awards and Allowances". The court said that the facts in that case meant that retroactive application would disrupt the orderly process of probate. The court indicated that the result might have been different, at least with regard

to the claim under the amended statute, if the estate had remained open.

5. Herndon v. Herndon, 388 So.2d 463 (La. App. 1980), held that the issue of constitutionality was waived because it was not presented at trial. The dicta of the court that Succession of Brown would not be applied retroactively proved erroneous, as shown by the holding of the court in Succession of Clivins. That dicta was relied on by the case at hand, however, through the Winn opinion.

* * *

THESE CASES ALLOWED RECOVERY ON CLAIMS FILED IN OPEN ESTATES, WHERE BOTH DEATH AND CLAIM WERE BEFORE TRIMBLE, WITH DICTA THAT CLAIMS FILED AFTER TRIMBLE (OR THE STATE DECISION APPLYING TRIMBLE) WOULD BE DENIED.

LIST OF CASES:

1. Allen v. Harvey, 568 S.W.2d 829
(Tenn. 1978).
2. Murray v. Murray, 564 S.W.2d 5
(Ky. 1978).
3. Stewart v. Smith, 268 Ark. 766,
601 S.W.2d 837 (Ark. 1980).
4. Lucas v. Handcock, 266 Ark. 141,
583 S.W.2d 491 (Ark. 1979).

CASES BRIEFED:

1. Allen v. Harvey, 568 S.W.2d 829
(Tenn. 1978), involved a death in
1942 and two other deaths at unknown
times. The estates had not been probated,
although one of them was open. The court
held that the nonmarital children were
entitled to heirship. It stated in dicta
that the decision would operate only
prospectively and on claims pending when
it was released. This dicta, relied on by

the court below through Winn, was later rejected by the same court in a case which concretely presented the issue of retroactivity. The Allen court appreciated the significance of the open, or unopened, status of the cases it decided, stating also that its holding would apply only where rights of inheritance had not finally vested.

2. Murray v. Murray, 564 S.W.2d 5 (Ky. 1978), softened the dicta of the same court in Pendleton that the insurmountable barrier would be applied unless the dispositive constitutional issue had been raised before Trimble, where the father died before Trimble. Murray reversed the decision of a court of appeals based on this dicta that the claimant could not inherit because the equal protection claim was not raised

until after Trimble. The nonmarital claimant had been excluded from inheritance based on the bastardy statute, and that fact was held sufficient presentation of the constitutional issue.

3. Stewart v. Smith, 268 Ark. 766, 601 S.W.2d 837 (Ark. 1980), followed the softened Murray approach, holding that where litigation was pending which included an objection to inheritance of the nonmarital children on the basis of bastardy, the constitutional issue was raised.

4. Lucas v. Handcock, 266 Ark. 142, 583 S.W.2d 491 (Ark. 1979), held that the constitutional issue had been raised where the appellant "was recognized as an heir at the time of the decision in Trimble. His right to inherit was not questioned until nearly a year after Trimble was

decided." The court distinguished Frakes on the basis that in that case, nothing was filed until after Trimble. The case at hand falls somewhere between Frakes and Lucas v. Handcock, because in it Delynda's heirship was omitted from the initial pleadings in the case by appellees. Lucas thus seems a step toward the analysis that it is the openness of the estate which is controlling.

* * *

LOUISIANA HAS A SPECIAL RULE BECAUSE TRIMBLE DID NOT OVERRULE LABINE, WHICH HAD SUSTAINED THE LOUISIANA STATUTE.

CASE BRIEF:

1. In Succession of Clivins, 426 So. 2d 585 (La. 1983), the court applied the test of Chevron v. Huson. The court first held that the Brown opinion, which struck

down the statute upheld in Labine, was foreshadowed. Second, the court found that the purpose of Trimble would be served by retroactive application. The court then grappled with how to effect Trimble's intent of fairness to the nonmarital child without causing impermissible hardship. It concluded that hardship could be avoided by limiting the retroactivity to claims against heirs, as opposed to third parties, and to intestate, as opposed to testate, estates. On rehearing, 426 So.2d 593, the court rejected this solution as unworkable and instead made the Brown opinion retroactive to the enactment of the amended Louisiana constitution at the end of 1974. The court held that no substantial hardship would result from this rule because the new constitution foreshadowed Brown. It

stated: "No law shall . . . discriminate against a person because of birth. . . ." Finally, the court noted that interference with land titles would be minimal under statutes amended after Brown. These statutes required that a filiation action by an unacknowledged illegitimate be brought before the claimant was nineteen, within one year of the parent's death, or one year from the date of the act for persons excluded by the first two restrictions. The legislature also reduced from ten to two years the time for challenging a judgment of possession after property passed into the hands of a third person. The court noted that the 1974 cut-off would protect persons who had been placed in possession of property many years before and relied on their ownership to their detriment. By this reasoning, the court

approached the motivation of finality of judgments and closure of estates to shield them from collateral attacks.

* * *

CASE IN WHICH TRIMBLE WAS APPLIED, WITH EXTREME RELUCTANCE, TO A CLOSED ESTATE.

BRIEF:

Pendleton v. Pendleton, 431 U.S. 911 (1977), was vacated by this Court for further consideration in light of Trimble v. Gordon. The first opinion of the Kentucky court, 531 S.W.2d 507 (Ky. 1975), shows that the decedent died in 1966. Affidavits of descent were filed the same year, and the property was transferred in reliance on them. The estate had been distributed. The collateral attack was in the form of a claim against the administrator, his surety, the persons to whom

the administrator had distributed the estate, and other defendants who had become record owners of his father's real estate. On remand, the court declared the Kentucky statute unconstitutional, and accorded equal protection to the claimant against the other defendants who had become record owners of his father's estate. The court stated in dicta that the statute would be applied to the devolution of title before Trimble, except where the constitutional issue was then in the process of litigation. The Kentucky court, when confronted with an open estate in Murray, allowed inheritance by adopting a lax reading of the "process of litigation" requirement. Murray is a step toward full retroactivity of Trimble in open estates. The case at hand relied, through Winn, on the dicta Pendleton.

Murray underscores that reliance was inappropriate in an open estate.

* * *

CASES APPLYING THE INVALID STATUTE TO CONTROL THE RESULT, DESPITE TRIMBLE, IN ESTATES STILL PENDING WHEN THE CLAIM WAS BROUGHT.

LIST OF CASES:

1. The case at hand, Reed v. Campbell, 682 S.W.2d 697 (Tex. App. --El Paso 1984, writ ref'd, n.r.e.).

2. Compton v. White, 266 Ark. 648, 587 S.W.2d 829 (Ark. 1979).

3. Ford v. King, 268 Ark. 128, 594 S.W.2d 227 (Ark. 1980).

CASES BRIEFED:

1. The case at hand, Reed v. Campbell, 682 S.W.2d 697, 700 (Tex.App.

--El Paso, 1984, writ ref'd, n.r.e.),
disposed of Trimble in a single sentence:

Under the rule of Winn v. Lackey,
supra, and the out-of-state cases
cited therein, the equal protection
argument fails as Trimble v. Gordon,
430 U.S. 762, 52 L.Ed.2d 31, 97 S.Ct.
1459 (1977), has not been applied
retroactively where the father died
before the case came down and suit was
filed afterwards."

The court was apparently untroubled
by the absence of Chevron factors in an
open and pending estate.

2. Compton v. White, 266 Ark. 648,
587 S.W.2d 829 (Ark. 1979), is the only
other case which closely resembles the
case at hand. Paternity was abundantly
proven. Heirship was refused in the open
estate for the sole reason that the dece-
dant died less than one month before
Trimble and no claim was filed in his
estate until after Trimble.

3. In Ford v. King, 268 Ark. 128, 594 S.W.2d 227 (Ark. 1980), the decedent died in 1928. The property remained in the possession of some of his descendants for 50 years. In March, 1978, nine of his descendants brought a suit for partition and determination of heirship. After a decree had been entered determining heirship and ordering the sale, the descendants of an alleged illegitimate daughter of decedent intervened. Proof of relationship was undocumented and improbable. The court refused to apply Trimble, giving among its reasons that the death was before Trimble and the claim was brought afterward.